

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-77
HOUSE BILL 253

AN ACT TO AMEND PROVISIONS OF THE JUSTICE REINVESTMENT ACT.

The General Assembly of North Carolina enacts:

PART I. ADD WAIVER OF EXTRADITION AS REGULAR CONDITION OF PROBATION/FILE WAIVER WITH CLERK OF SUPERIOR COURT AND REQUIRE PROBATIONER TO SUBMIT TO PHOTOGRAPH

SECTION 1. G.S. 15A-1343 reads as rewritten:

"§ 15A-1343. Conditions of probation.

- ...
- (b) Regular Conditions. – As regular conditions of probation, a defendant must:
- (1) Commit no criminal offense in any jurisdiction.
 - (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
 - (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
 - (3a) Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.
 - (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
 - (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
 - (6) Pay a supervision fee as specified in subsection (c1).
 - (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
 - (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
 - (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
 - (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
 - (11) Repealed by Session Laws 2011-62, s. 1, as amended by Session Laws 2011-412, s. 2.2, effective December 1, 2011, and applicable to offenses committed on or after December 1, 2011.
 - (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably



available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program.

- a. If the defendant is placed on supervised probation, the following procedures apply:
 1. The probation officer shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.
 2. The program shall notify the probation officer if the defendant fails to participate in the program or if the defendant is discharged from the program for violating any of the program rules.
 3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the probation officer shall file a violation report with the court and notify the district attorney of such noncompliance.
 - b. If the defendant is placed on unsupervised probation, the following procedures apply:
 1. The defendant shall be required to notify the district attorney and the abuser treatment program of their choice of program within 10 days of the judgment if the program has not previously been selected.
 2. The district attorney shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.
 3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the program shall notify the district attorney of such noncompliance.
- (13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.
 - (14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.
 - (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
 - (16) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual costs of drug or alcohol screening and testing.
 - (17) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a felony conviction.
 - (18) Submit to the taking of digitized photographs, including photographs of the probationer's face, scars, marks, and tattoos, to be included in the probationer's records.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Division of Adult Correction of the Department of Public Safety governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), ~~and (15)~~(15), (16), and (17) of this subsection.

...
(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which ~~he~~the defendant is being released. If any modification of the terms of that probation is subsequently made, ~~he~~the defendant must be given a written statement setting forth the modifications.

Upon entry of an order of supervised probation by the court, a defendant shall submit to the Division of Adult Correction for filing with the clerk of superior court a signed document stating that:

- (1) The defendant will comply with the conditions that have been imposed by the court.
- (2) If the defendant fails to comply with the conditions imposed by the court and is taken into custody outside of this State, the defendant waives all rights relating to extradition proceedings if the defendant was convicted of a felony.

...."

PART II. ELIMINATE CREDIT FOR TIME SPENT IN CUSTODY AS A RESULT OF POST-RELEASE SUPERVISION OR PAROLE REVOCATION PROCEEDING AGAINST A THREE-MONTH REIMPRISONMENT

SECTION 2. G.S. 15A-1368.3(c) reads as rewritten:

"(c) Effect of Violation. – If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:

- ...
(3) Pursuant to Article 19A of Chapter 15, the Division of Adult Correction of the Department of Public Safety shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under ~~G.S. 15A-1368.6~~G.S. 15A-1368.6, unless as a result of a violation of the conditions, the supervisee is returned to prison for a three-month period. The three-month period shall not be reduced by credit for time already served. Any such credit shall be applied toward the maximum prison term.

...."

PART III. ELIMINATE THE COMMUNITY CORRECTIONS BOARD AND CREATE THE JUSTICE REINVESTMENT COUNCIL

SECTION 3.(a) G.S. 143B-1157 and G.S. 143B-1158 are repealed.

SECTION 3.(b) Article 13 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-1161. Justice Reinvestment Council.

(a) The Justice Reinvestment Council is established to act as an advisory body to the Commissioner of Adult Correction with regard to this Subpart. The Council shall consist of 13 members as follows, to be appointed as provided in subsection (b) of this section:

- (1) Two members of the Senate.
- (2) Two members of the House of Representatives.
- (3) A judge of the superior court.
- (4) A judge of the district court.
- (5) A district attorney.
- (6) A criminal defense attorney.
- (7) A county sheriff.
- (8) A chief of a city police department.
- (9) A victim service provider.
- (10) A member selected to represent behavioral health services.
- (11) A member selected to represent substance abuse treatment services.

(b) The membership of the Council shall be selected as follows:

- (1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member representing behavioral health services, and the member representing substance abuse treatment services.
- (2) The Lieutenant Governor shall appoint the victim service provider.
- (3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, and the criminal defense attorney.
- (4) The President Pro Tempore of the Senate shall appoint the two members of the Senate.
- (5) The Speaker of the House of Representatives shall appoint the two members of the House of Representatives.

In appointing the members of the Council, the appointing authorities shall make every effort to ensure fair geographic representation of the Council membership and to ensure that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms. The members identified in subdivisions (1) and (2) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (3) through (7) of subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (8) through (11) of subsection (a) of this section shall be appointed initially for a term of three years. The terms of office of the initial members appointed under this section commence effective October 1, 2015.

At the end of their respective terms of office, their successors shall be appointed for terms of three years effective July 1. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) The purpose of the Justice Reinvestment Council in conjunction with the Department of Public Safety, Division of Adult Correction, is to:

- (1) Recommend policy enhancements to the Justice Reinvestment Act of 2011.
- (2) Assist in the continued education of criminal justice system stakeholders.
- (3) Support implementation of the Justice Reinvestment Act of 2011.
- (4) Identify new initiatives that further the implementation of the Justice Reinvestment Act of 2011 and the Adult Corrections Recidivism Reduction Plan."

PART IV. AUTHORIZE POST-RELEASE SUPERVISION AND PAROLE PRELIMINARY HEARINGS TO BE CONDUCTED BY VIDEOCONFERENCE

SECTION 4.(a) G.S. 143B-720 reads as rewritten:

"§ 143B-720. Post-Release Supervision and Parole Commission – creation, powers and duties.

- ...
- (f) The Commission may conduct the following proceedings by videoconference:
- (1) All hearings regarding ~~the revocation or termination~~ violation of conditions of post-release supervision and all hearings regarding ~~revocation, termination, or suspension~~ violation of conditions of parole.

- (2) All hearings regarding criminal contempt for willful refusal to accept post-release supervision or comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes.

(g) A hearing officer may conduct the following proceedings by videoconference:

(1) Preliminary hearings regarding violation of conditions of post-release supervision.

(2) Preliminary hearings regarding violation of conditions of parole."

SECTION 4.(b) G.S. 15A-1368.6 reads as rewritten:

"§ 15A-1368.6. Arrest and hearing on post-release supervision violation.

...
(b) When and Where Preliminary Hearing on Post-Release Supervision Violation Required. – Unless the hearing required by subsection (e) of this section is first held or a continuance is requested by the supervisee, a preliminary hearing on supervision violation shall be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a supervisee to determine whether there is probable cause to believe that the supervisee violated a condition of post-release supervision. The preliminary hearing for violations of post-release supervision may be conducted by videoconference. Otherwise, the supervisee shall be released seven working days after arrest to continue on supervision pending a hearing. If the supervisee is not within the State, the preliminary hearing is as prescribed by G.S. 148-65.1A.

...
(e) Revocation Hearing. – Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The revocation hearing for violations of post-release supervision may be conducted by videoconference. The Commission shall adopt rules governing the hearing."

SECTION 4.(c) G.S. 15A-1376 reads as rewritten:

"§ 15A-1376. Arrest and hearing on parole violation.

(a) Arrest for Violation of Parole. – A parolee is subject to arrest by a law-enforcement officer or a parole officer for violation of conditions of parole only upon the issuance of an order of temporary or conditional revocation of parole by the Post-Release Supervision and Parole Commission. However, a parole revocation hearing under subsection (e) may be held without first arresting the parolee.

(b) When and Where Preliminary Hearing on Parole Violation Required. – Unless the hearing required by subsection (e) is first held or a continuance is requested by the parolee, a preliminary hearing on parole violation must be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a parolee to determine whether there is probable cause to believe that he violated a condition of parole. The preliminary hearing for violations of parole may be conducted by videoconference. Otherwise, the parolee must be released seven working days after his arrest to continue on parole pending a hearing. If the parolee is not within the State, his preliminary hearing is as prescribed by G.S. 148-65.1A.

(c) Officers to Conduct Hearing. – The preliminary hearing on parole violation must be conducted by a judicial official, or by a hearing officer designated by the Post-Release Supervision and Parole Commission. No person employed by the Division of Adult Correction of the Department of Public Safety may serve as a hearing officer at a hearing provided in this section unless he is a member of the Post-Release Supervision and Parole Commission or is employed solely as a hearing officer.

(d) Procedure for Preliminary Hearing on Parole Violation. – The Division of Adult Correction of the Department of Public Safety must give the parolee notice of the preliminary hearing and its purpose, including a statement of the violations alleged. At the hearing, the parolee may appear and speak in his own behalf, may present relevant information, and may, on request, personally question witnesses and adverse informants, unless the hearing officer finds good cause for not allowing confrontation. If the person holding the hearing determines

there is probable cause to believe the parolee violated his parole, he must summarize the reasons for his determination and the evidence he relied on. Formal rules of evidence do not apply at the hearing. If probable cause is found, the parolee may be held in the custody of the Division of Adult Correction of the Department of Public Safety to serve the appropriate term of imprisonment, subject to the outcome of a revocation hearing under subsection (e).

(e) Revocation Hearing. – Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The revocation hearing may be conducted by videoconference. The Post-Release Supervision and Parole Commission must adopt rules governing the hearing."

PART V. CLARIFY CONFINEMENT IN RESPONSE TO VIOLATION

SECTION 5. G.S. 15-196.2 reads as rewritten:

"§ 15-196.2. Allowance in cases of multiple sentences.

In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment for more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent.

Upon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served on concurrent confinements in response to violation under G.S. 15A-1344(d2) shall be credited to only one sentence."

PART VI. AMEND APPLICATION FOR ISSUANCE OF REQUISITION TO INCLUDE POST-RELEASE SUPERVISION

SECTION 6. G.S. 15A-743(b) reads as rewritten:

"(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, ~~probation~~ probation, post-release supervision, or parole, the prosecuting attorney of the county in which the offense was committed, the ~~parole board, or Post-Release Supervision and Parole Commission,~~ the Director of ~~Prisons~~ Prisons, the Director of Community Corrections, or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made."

PART VII. CLARIFY CONTINUANCE OF SUPERVISION UPON APPEAL OF ACTIVATED SENTENCE

SECTION 7. G.S. 15A-1347(c) reads as rewritten:

"(c) If a defendant appeals an activation of a sentence as a result of a finding of a violation of probation by the district or superior ~~court,~~ court and is released pursuant to Article 26 of Chapter 15A of the General Statutes, probation supervision will continue under the same conditions until the ~~termination date of the supervision period~~ expiration of the period of probation or disposition of the appeal, whichever comes first."

PART VIII. UPDATE CURRENT TERMINOLOGY

SECTION 8.(a) G.S. 15-190(a) reads as rewritten:

"(a) ~~Some guard or guards or Correction custody personnel~~ or some other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the ~~guard or guards~~ correctional custody personnel or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments

thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in the warden's place, and a licensed physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or member of the clergy or religious leader of the person's choosing may be present if they so desire. The identities, including the names, residential addresses, residential telephone numbers, and social security numbers, of witnesses or persons designated to carry out the execution shall be confidential and exempted from Chapter 132 of the General Statutes and are not subject to discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court Judge for Wake County may order disclosure of names made confidential by this section after making findings that support a conclusion that disclosure is necessary to a proper administration of justice.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician, or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

SECTION 8.(b) G.S. 15-195 reads as rewritten:

"§ 15-195. Prisoner taken to place of trial when new trial granted.

Should a new trial be granted the condemned person, convict or felon against whom sentence of death has been pronounced, after he has been conveyed to the penitentiary, he shall be conveyed back to the place of trial by such ~~guard or guards~~ correctional custody personnel as the warden of the penitentiary shall direct, their expenses to be paid as is now provided by law for the conveyance of convicts to the penitentiary."

SECTION 8.(c) G.S. 148-23 reads as rewritten:

"§ 148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.

No one addicted to the use of alcoholic beverages, or narcotic drugs, shall be employed as superintendent, warden, guard, or in any other position connected with the Division of Adult Correction of the Department of Public Safety, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of alcoholic beverages during hours of employment, or reports for duty under the effect of intoxicants, or narcotic drugs, or who shall become intoxicated, or uses narcotic drugs, under circumstances that bring discredit on the Division of Adult Correction of the Department of Public Safety, shall be subject to immediate dismissal from employment by any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, ~~guard,~~ correctional officer, supervisor, or other person holding any position in the Division of Adult Correction of the Department of Public Safety who curses a prisoner under his charge shall be subject to immediate dismissal from employment and shall not be eligible for reinstatement."

SECTION 8.(d) G.S. 148-46(a) reads as rewritten:

"(a) When any prisoner, or several combined shall offer violence to any officer, overseer, or ~~guard,~~ correctional officer, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or ~~guard~~ correctional officer shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape."

PART IX. CLARIFY PISTOL PURCHASE PERMIT REQUIREMENT FOR PROBATION OFFICERS

SECTION 9.(a) G.S. 14-404(d) reads as rewritten:

"(d) Nothing in this Article shall apply to officers authorized by law to carry firearms if the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and provide any of the following:

- (1) A letter signed by the officer's supervisor or superior officer stating that the officer is authorized by law to carry a firearm.
- (2) A current photographic identification card issued by the officer's employer.

- (3) A current photographic identification card issued by a State agency that identifies the individual as a law enforcement officer or a probation and parole officer certified by the State of North Carolina.
- (4) A current identification card issued by the officer's employer and another form of current photographic identification."

SECTION 9.(b) G.S. 20-187.2 is amended by adding a new subsection to read:

"(c) For purposes of this section, certified probation and parole officers shall be considered members of a North Carolina State law enforcement agency."

PART X. PROVIDE THE BASE AWARD FOR RECIDIVISM REDUCTION SERVICES (RRS) VENDORS UPON INITIATION OF SERVICES

SECTION 10. G.S. 143B-1156 is amended by adding a new subsection to read:

"(e) The Division of Adult Correction shall pay service providers the contract base award upon the initiation of services with the remaining payments made as milestones are reached as stated in the contract for services. If the service provider cancels or terminates the contract prior to its conclusion, the service provider shall reimburse the Division for the unearned pro rata portion of the base award."

PART XI. EFFECTIVE DATE

SECTION 11. Sections 3, 4, 8, 9, and 10 of this act become effective July 1, 2016. Sections 1, 2, 5, 6, and 7 of this act become effective December 1, 2016, and apply to offenses committed on or after that date. The remainder of this act becomes effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2016.

s/ Harry Brown
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:05 a.m. this 30th day of June, 2016