

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-306
HOUSE BILL 331

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

~~"Community Penalties Program Act of 1983.~~

"Sentencing Services Programs.

"§ 7A-770. Purpose.

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. ~~information that will assist that system in imposing sentences that make the most effective use of available resources.~~ In furtherance of this purpose, this Article provides for the following:

- (1) ~~Establishment of local sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.
- (2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.
- (3) Local involvement in the development of ~~community penalties sentencing services~~ to assure that they are specifically designed to meet local needs.
- (4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections

programs by advising judges and other court officials of the offenders most suited for a particular program.

"§ 7A-771. Definitions.

As used in this Article:

- (1) ~~"Community penalties—"~~"Sentencing services program" means an agency or State-run office within the judicial—superior court district which shall (i) prepare ~~community penalty sentencing plans~~; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.
- (2) ~~"Community penalty—"~~"Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the targeted offender's proposed community penalty, offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.
- (2a) "Director" means the Director of the Administrative Office of the Courts.
- (2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.
- (3) ~~"Judicial district" means a district court district as defined in G.S. 7A-133.~~
- (4) Repealed by Session Laws 1991, c. 566, s. 4.
- (5) ~~"Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties sentencing services~~ programs. ~~Community penalties—Sentencing services~~ programs that are grantees shall use ~~such the funds to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed

the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties sentencing services~~ programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties sentencing services~~ programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties sentencing services~~ program.

A ~~community penalties sentencing services~~ program shall be responsible for:

- (1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~

Identifying offenders who:

- a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;
 - b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and
 - c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.
- (2) ~~Preparing detailed ~~community penalty sentencing services~~ plans requested pursuant to G.S. 7A-773.1 for presentation to the sentencing judge by the offender's attorney or at the request of the sentencing judge-judge.~~
 - (3) ~~Contracting or arranging with public or private agencies for services described in the ~~community penalty sentencing~~ plan.~~
 - (4) ~~Monitoring the progress of offenders under ~~community penalty~~ plans.~~

"§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time

before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the judicial superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

- (1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.
- (2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.
- (3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).
- (4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.
- (4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

- (5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.
- ~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~
- ~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~
- ~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. Community penalties-Sentencing services board.

(a) ~~Each community penalties-sentencing services program shall establish a community penalties-sentencing services board to provide direction and assistance to the community penalties-sentencing services program in the implementation and evaluation of the plan. Community penalties-Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The community penalties-sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The community penalties-sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:~~

- ~~(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);~~
- ~~(1a) Development of an annual budget for the program;~~
- (2) Hiring, firing, and evaluation of program personnel;
- (3) Selection of board members;
- ~~(4) Arranging for a private and independent annual audit; audit, in accordance with G.S. 143-6.1;~~
- (5) Development of procedures for contracting for services.

~~(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.~~

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement~~. confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties-sentencing services program~~ on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program.~~ The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for

changes in the number of convictions. program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

- a. Special probation as defined in G.S. 15A-1351(a).
- b. Assignment to a residential program.
- c. House arrest with electronic monitoring.
- d. Intensive probation.
- e. Assignment to a day-reporting center.

~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment."~~

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior

criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective January 1, 2000, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:15 p.m. this 15th day of July, 1999