Published by the Institute of Government, The University of North Carolina at Chapel Hill

No. 93/03
September 1993

Administration of Justice Memorandum

Judges, Public Defenders, Appellate Defenders, and Prosecutors

Sentencing and Corrections: 1993 North Carolina Legislation

Stevens H. Clarke

Structured Sentencing and Related Legislation

A Bit of History

The present North Carolina statutes on sentencing and execution of sentences come mostly from five sources: North Carolina General Statutes (hereinafter G.S.) Ch. 15A, Art. 100, enacted in 1977 regarding capital sentencing; the Trial and Appellate Procedure Act, effective in 1978, which applies to misdemeanors and felonies committed before July 1, 1981; the Fair Sentencing Act, which applies to felonies committed on or after July 1, 1981; the Safe Roads Act of 1983, which set strict sentencing guidelines for a redefined offense of impaired (i.e., drunken) driving; and various legislation after 1981 that has sought to shorten imprisonment and encourage alternative sentences.[1] The new structured-sentencing legislation, explained below, affects all of these except capital sentencing and sentencing of impaired drivers.

Structured sentencing is not North Carolina's first attempt to adopt determinate sentencing, a philosophy that calls for even-handed punishment with strict regulation of judges' and correction officials' discretion. The first was the Fair Sentencing Act of 1981 (hereinafter FSA). The FSA, developed over seven years beginning in 1974, was first introduced in the 1977 General Assembly and did not become law until 1981. As finally enacted, it established presumptive (standard) prison terms for felonies, required written judicial findings to support departures from the standard terms (thereby allowing meaningful appellate review of sentences), and drastically reduced the discretion of the Parole Commission regarding the length of time imprisoned felons would serve. The FSA largely replaced parole discretion with a system of "good time" (credit for good behavior in prison) and "gain time" (credit for work and program participation in prison) at rates set by statute.

The General Assembly's Commission on Correctional Programs and other committees that developed the FSA compromised greatly with the determinate-sentencing philosophy—for example, they largely exempted committed youthful offenders, plea-bargained sentences, and suspension of sentences from their determinate scheme. Nevertheless, at its time the FSA was considered a radical departure from existing law, and it faced years of spirited opposition from a variety of groups before enactment. Some opponents thought it too lenient, others too harsh, and many too complicated.

After enactment of the FSA, which might have been expected to quell the sentencing debate for a while, the General Assembly had little rest. The prison population continued to grow rapidly (as it had since 1970), and the county jail population was growing even faster.[2] Soon the General Assembly was presented with recommendations for alternatives to imprisonment from the Citizens' Commission on Alternatives to Incarceration. Also, it had to respond to lawsuits alleging unconstitutional crowding of the state's prisons.

By 1983, within two years of enacting the FSA (a determinate-sentencing law), the General Assembly began

to adopt measures such as community-service parole (known to prison inmates as the "one-eighth law"), restoring to correctional officials some of the discretion the FSA had taken away. In 1985, the General Assembly created the Special Committee on Prisons to respond to prison-crowding litigation.[3] This committee recommended various prison-construction and other correctional measures to implement the lawsuit settlements. Settlement of these lawsuits led the General Assembly in 1987 to enact the prison-population "cap" that required speeding up the parole process when the number of prisoners exceeded a specified limit, as well as other legislation making many offenders eligible for discretionary parole earlier. Meanwhile, in an attempt to implement the consent judgments in the lawsuits that required more space per inmate, the General Assembly renovated and expanded prison facilities—paid for by borrowing $275 million, $200 million of which required (and received) voter approval in the 1990 general election.[4]

The prison cap and related legislation to shorten time in prison set the stage for the structured-sentencing law. A widespread impression among judges and prosecutors was that because penal laws had been watered down so much and service of prison sentences had become so unpredictable, crime was increasing. Support grew for "truth in sentencing"—prison and jail sentences that were actually served, not heavily discounted. At first the Special Committee on Prisons was reluctant to take on sentencing because sentencing had so recently been the subject of major legislative revision (the 1981 FSA), but eventually it felt compelled to do so. The committee recommended creation of the Sentencing and Policy Advisory Commission (hereinafter Sentencing Commission) to look for a principled way of meting out punishments that were fair but would not overload prisons and other correctional facilities.

The Sentencing Commission

The General Assembly created the Sentencing Commission in 1990 to study sentencing and related matters and report its recommendations.[5] The commission's 23 members included, among others, a judge appointed by the chief justice of the supreme court serving as chair, a judge appointed by the chief judge of the court of appeals, the attorney general or his or her designee, the secretary of correction, the secretary of crime control and public safety, the parole commission chair, the presidents of the District Court Judges Association and of the Conference of Superior Court Judges, the presidents of the Sheriffs' Association and of the Association of Chiefs of Police, a criminal defense attorney appointed by the chief justice on recommendation of the president of the Academy of Trial Lawyers, the president of the Conference of District Attorneys, a nonlawyer member of the public appointed by the governor, a "rehabilitated" former prison inmate appointed by the commission's chair, a member of the Victim Assistance Network appointed by the lieutenant governor, and legislators appointed by the House speaker and Senate president pro tempore as explained below.

The commission's chief tasks were to develop and recommend sentencing "structures" (guidelines) for judges' use in determining the appropriate type of punishment for each case and the proper term of probation or imprisonment (if any), and to "classify" (set penalty limits or ranges for) criminal offenses. It was also required to recommend a "comprehensive community corrections strategy and organizational structure" and study a variety of matters such as "the long-range needs of the criminal justice and corrections systems."

In developing sentencing guidelines, the commission was required to take into account "[t]he available resources and constitutional capacity of the Department of Correction, local confinement facilities, and community-based sanctions," and to estimate the effect of each set of guidelines on state and local correctional facilities, using a correctional-population simulation model that the commission was required to design. The commission could have interpreted this language as requiring it to stay within the limits of existing correctional facilities in planning its guidelines, but it did not. Many members saw the commission's goal as restoring necessary severity to penal sanctions rather than restraining prison population growth. The commission's early drafts of guidelines, by its own projections, would have resulted in increasing the prison population by several orders of magnitude.

Divided over the contentious issue of punishment, the commission failed to produce recommendations on sentencing for the 1992 legislative session, its original reporting deadline. In 1992, the General Assembly extended the commission's life until July 1, 1993, and gave it until thirty days after the convening of the 1993 session to make its sentencing recommendations.[6] The General Assembly further instructed the commission: whatever other guidelines it recommended, it was to present one set of guidelines "consistent with" the "standard operating capacity" of state prisons and county jails. "Standard operating capacity," where state prisons were concerned, was defined to include all additional space built with the proceeds of the $275 million in bonds authorized by Chs. 933 and 935 of the 1989 Session Laws. Under G.S. 164-37, the 1992 legislation expanded the commission's membership from twenty-three to twenty-seven by increasing from one to three the number of members appointed by the House speaker and by the Senate president pro tempore.

Extended, re-instructed, and enlarged by the legislature, the Sentencing Commission continued its work in 1992 and drafted recommended legislation (described below) that was

modified and enacted. The commission actually presented two structured-sentencing bills to the General Assembly: one that would not result (according to the commission's projections) in increasing the prison population beyond standard operating capacity, and a tougher version that the commission preferred which would have exceeded prison capacity.[7] Only the first version received serious attention. (Structured sentencing's expected effect on the prison population is discussed in a later section.)

Provisions of New Legislation

The new sentencing legislation consists of the structured-sentencing bill (Ch. 538, H 277) plus its companion measures, the offense-classification bill (Ch. 539, H 278) and the State-County Criminal Justice Partnership Act (Ch. 534, H 281). The structured-sentencing law applies only to offenses committed on or after January 1, 1995. It carefully preserves present law regarding sentences for driving while impaired (G.S. 20-138.1 and related provisions) and imposition of capital punishment (G.S. Ch. 15A, Art. 100), although it somewhat changes life sentences, which will be imposed only for first-degree murder.

The structured-sentencing law is long and complex; the following description does not include every provision. *Note that this legislation could be changed in the 1994 session before it goes into effect.*

Purposes of Sentencing

Structured-sentencing legislation retains the purposes of sentencing stated in the FSA (present G.S. 15A-1340.3): imposing punishment commensurate with the injury caused by the offense, protecting the public by restraining offenders, rehabilitating offenders, and deterring criminal behavior.

Authorized Types of Sentences

Sentence dispositions. The North Carolina Constitution authorizes various punishments for criminal offenders: death, fine, imprisonment, and removal and disqualification from public office. North Carolina courts have inherent authority, which is restricted and regulated by statute, to impose probation—a suspended sentence to prison/jail involving various conditions set by the court, like supervision by a probation officer, payment of restitution to the victim, and performance of community service.[8] The structured-sentencing legislation does not change this authority but recasts it by adopting specific forms of sentences, called sentence dispositions, defined as follows in new G.S. Ch. 15A, Art. 81B:

Active punishment requires service of a term of imprisonment that is not suspended; it does not include "special probation" (probation with a short term of imprisonment as a condition of suspension of a longer term). The structured-sentencing legislation revises the present statute (G.S. 15A-1352) regarding sentencing to (state) prison or (county) jail: If the term is imposed for a misdemeanor and does not exceed 90 days (now the limit is 180 days), the commitment must be to a facility other than a state prison (normally a county jail). If it is for a misdemeanor and exceeds 90 days, the court may choose prison or jail. Felony commitment must be to prison unless the sheriff or county commissioners request that the court sentence the offender to a jail. Throughout this section, when "prison/jail term" is used, it refers to a term of imprisonment in either prison or jail depending on what G.S. 15A-1352 allows.

Intermediate punishment is probation supervised by a probation officer that involves at least one of the following conditions: (1) special probation; (2) assignment to a program of training, counseling, or treatment (a residential program or one that the offender must visit daily or periodically); (3) electronic monitoring (often called "electronic house arrest"), in which the offender has to remain in a specified place for a certain period each day and his presence is monitored by an electronic device he wears; or (4) intensive probation, which involves closer supervision by probation officers than does regular probation pursuant to G.S. 143B-262(c).

Community punishment (punishment that is not active or intermediate) includes unsupervised probation, supervised probation without any of the "intermediate" conditions listed above, and a fine without probation.

Repeal of "committed youthful offender" sentence. Under present law, in imposing an active prison/jail term a judge can sentence as a "committed youthful offender" or "CYO" an offender who is under age twenty-one at the time of the offense (or in some circumstances under age twenty-five). This sentencing makes the offender eligible for discretionary parole (release from prison/jail by the Parole Commission) upon entering prison. The structured-sentencing legislation (Ch. 538, § 34) repeals the CYO statute, G.S. Ch. 148, Art. 3B, thus making a young offender subject to the same rules as an older one regarding service of a prison/jail term. A judge can still consider the offender's immaturity as a mitigating factor, but this can only lower the minimum prison/jail term, not excuse the offender from serving it.

Fine. Under structured sentencing, any sentence that involves a prison/jail term may also include a fine; if community punishment is authorized or if the defendant is a corporation or other organization, a fine may be the sole punishment. The amount of the fine is up to the judge unless applicable law provides otherwise.

Probation. The most important change that the structured-sentencing law makes in probation as an authorized punishment is to restrict sentencing judges' use of it (explained further in the next section). Also, the structured-sentencing law establishes standard terms of probation:

misdemeanants, community punishment—6 to 18 months; misdemeanants, intermediate punishment—12 to 24 months; felons, community punishment—12 to 30 months; and felons, intermediate punishment—18 to 36 months. The sentencing judge may impose shorter or longer terms of probation, but only if he or she makes specific findings that this is necessary. As under present law, the court may during the last six months of the original term of probation extend the term for up to three years, with the consent of the offender, to allow completion of restitution or treatment ordered as a condition of probation.

The new law seeks to revise the philosophy and effectiveness of probation. It requires the Department of Correction (hereinafter DOC) to "develop a plan to handle offenders sentenced to community and intermediate punishments." This plan's main purposes must be "to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety." Structured sentencing states as a "goal of the General Assembly" (subject to the availability of funds) that probation officers' caseloads be limited to 90 offenders on community punishment or 60 offenders on intermediate punishment. Structured sentencing also makes changes regarding the *execution* of probation sentences (discussed in the later section on execution of sentences).

Eligibility for "boot camp." "Boot camp," formally known as "IMPACT," is a program of military-style discipline intended to rehabilitate young offenders, now usually used as a condition of special probation under present G.S. 15A-1343(b1)(2a) and -1343.1. The structured-sentencing law revises the eligibility requirements for this program: the offender cannot have previously served an active term over 120 days for an offense not subject to structured sentencing or over 30 days for an offense subject to structured sentencing. Under structured sentencing, boot camp will fall into the category of an intermediate punishment because special probation is involved.

Deferred prosecution. In present law [G.S. 15A-1332, -1341(a), -1342(a) and -(i)], deferred prosecution is a sort of "quasi-sentence," conferred by the prosecutor through written agreement with the defendant and approved by the trial court, that grants immunity from further prosecution if the defendant satisfies conditions such as paying restitution or participating in a treatment program. The structured-sentencing law limits deferred prosecution to defendants charged with nothing more serious than a Class H felony (for which the longest possible minimum prison/jail term is twenty-five months); in current law, deferred prosecution is limited to offenses punishable by no more than ten years (which also includes all offenses up to a Class H felony). Also, structured sentencing requires the judge, before approving the deferred prosecution, to find that the defendant is unlikely to commit another offense other than a Class 3 misdemeanor; present law specifies another offense punishable by more than 30 days (offense classes are explained in the later section on offense classification).

Sentencing Procedure

The structured-sentencing law's sentencing procedure, new Article 81B of G.S. Ch. 15A, applies to all felonies and all misdemeanors except impaired driving (the latter continues to be covered by the strict guidelines of G.S. 20-138.1). The new law drastically reduces judges' discretion to select a sentence. It makes sentencing largely a matter of looking up the proper cell in statutory tables that contain guidelines regarding: (1) the proper sentence disposition (active, intermediate, or community punishment), and (2) a narrow permissible range for both the minimum and maximum prison/jail terms, whether they are active or suspended. Compare this with the present FSA, Art. 81A of Ch. 15A, which the structured-sentencing law repeals. The FSA applies only to felonies, does not control the sentence disposition (leaving judges free to impose probation unless forbidden by other statutes), and sets only a presumptive prison/jail term—a standard from which the judge may depart upward or downward upon finding of aggravating or mitigating circumstances (see present G.S. 15A-1340.4). When sentencing for felonies under the new law, judges must still find aggravating and mitigating factors enumerated in G.S. 15A-1340.16, which are for the most part the factors of the FSA, but under structured sentencing such factors allow much less variation in sentencing than under the FSA (this point is explained further below). An example illustrates the difference between structured sentencing and the FSA.

Example: sentencing for felonious breaking or entering. Consider sentencing under the new structured-sentencing law for the offense of felonious breaking or entering where the offender has two prior convictions, one of felonious larceny and one of misdemeanor larceny. First, the judge establishes that felonious breaking or entering is a Class H felony. Second, the judge computes the offender's prior-record score under new G.S. 15A-1340.14: two points for the prior felonious larceny (a Class H felony) and one point for the prior misdemeanor conviction, a total of three points. This score puts the offender in Prior Record Level II. Third, the judge considers whether there is evidence of aggravating or mitigating factors under new G.S. 15A-1340.16 (explained further below). Fourth, the judge looks up the appropriate sentence disposition and prison/jail terms in the statutory guidelines [G.S. 15A-1340.17(c), -(d), and -(e)]. For a Class H felony, he or she finds a section in the guidelines table that looks like this:

Class H Felony Sentencing Guidelines

Level I	Level II	Level III	Level IV	Level V	Level VI	
C/I	I	I/A	I/A	I/A	A	
6–8	8–10	10–12	11–14	15–19	20–25	Aggravated
5–6	6–8	8–10	9–11	12–15	16–20	Presumptive
4–5	4–6	6–8	7–9	9–12	12–16	Mitigated

In the table, "Level" refers to the offender's prior-record level. "C" means that a community punishment is authorized, "I" that an intermediate punishment is authorized, and "A" that an active punishment is authorized. The range of numbers is the range of the authorized *minimum prison/jail term* in months. The ranges are designated aggravated, presumptive, or mitigated as shown.

For a Class H offender in Prior Record Level II, the table indicates that an intermediate punishment is required, so the judge must impose probation with one of the intermediate conditions explained above (for example, electronic monitoring). He or she must set a term of probation of between 18 and 36 months, the required range for intermediate felony punishment under new G.S. 15A-1343.2(d).

As part of the probation, the judge must impose both a minimum and a maximum prison/jail term that are within the range set by the statutory guidelines; these terms must be suspended because an intermediate punishment is required in this case. The *minimum prison/jail term* in this case must be in the presumptive range of 6 to 8 months, except that if the judge finds aggravating factors that outweigh any mitigating ones, he or she may in his or her discretion set the minimum term in the 8- to 10-month range; if mitigating factors outweigh aggravating ones, he or she may set it in the 4- to 6-month range. Once the minimum is set, the *maximum term* is determined by the guidelines in G.S. 15A-1340.17(d) and -(e), depending on the minimum. For example, if the judge chooses a minimum term of 8 months, the maximum must be 10 months. If the probation were ever revoked, the offender would have to serve at least 8 months and no more than 10 months, depending on how much "earned time" (explained below) he or she received; however, he or she would receive credit for any previous confinement in the case (for example, for time in jail pretrial or pending a revocation hearing).

Contrast this example with sentencing under the present FSA: the judge would be free to impose probation for a term of up to five years or an active sentence. The FSA's presumptive active term for a Class H felony is 36 months, but by finding mitigating or aggravating factors the judge could set an active term anywhere from 1 day to 120 months. Under the FSA, the offender could actually serve as little as one-eighth of the active term imposed (or even less, if sentenced as a committed youthful offender); in contrast, structured sentencing guarantees that the minimum term in this case, if activated through probation revocation, would actually be served before release.

Aggravating and mitigating factors in felony sentencing. In sentencing for a felony under the structured-sentencing law, the court must "consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate" (G.S. 15A-1340.16(a)).[9] The function of aggravating and mitigating factors is different in structured sentencing than in the present FSA. In structured sentencing, aggravating and mitigating factors allow the judge to depart somewhat from the "presumptive" (middle) range and sentence from an aggravated or mitigated range of terms; typically, the allowed departure is about 25 percent upward or downward. In contrast, the FSA's aggravating and mitigating factors permit wide departures from the presumptive prison term.

In structured sentencing, aggravating and mitigating factors do not authorize departure from the sentence disposition (community, intermediate, or active punishment) specified in the guidelines, unless "extraordinary mitigation" is found (see next subsection), or unless some other statute specifically authorizes it.

Structured sentencing retains most of the aggravating and mitigating factors established by the FSA (G.S. 15A-1340.4)—for example, inducing others to participate in the offense (aggravating) and having limited mental capacity (mitigating)—with some changes, omissions, and additions. Regarding aggravating factors, the structured-sentencing law omits prior convictions (these are handled by prior-record levels, as explained earlier); modifies the "on pretrial release" factor to include being on pretrial release for any criminal charge (not just a felony as in the FSA);[10] and adds the following factors: joining with another person in committing the offense without being charged with criminal conspiracy, and inflicting serious, permanent, and debilitating injury on the victim. It also adds as an aggravating factor that "[t]he defendant does not support the defendant's family," a factor seemingly at odds with the structured-sentencing law's requirement that aggravating factors be "present in the offense."

Regarding mitigating factors, structured sentencing keeps all the FSA factors except for absence of prior convictions (accounted for through prior-record level) and adds these: accepting responsibility for one's criminal conduct; being in, or having successfully completed, a drug- or alcohol-abuse treatment program that the defendant entered after arrest and before trial; having "a support system in the community"; having a "positive employment history" or being gainfully employed; having a "good treatment prognosis"

with a "workable treatment plan" available; and supporting one's family.

As in the FSA, the judge may find any other nonstatutory aggravating or mitigating factors that are "reasonably related to the purposes of sentencing" stated earlier. Structured sentencing retains the FSA's bars against (1) using the same evidence to prove more than one aggravating factor, (2) using evidence necessary to prove an element of the offense to establish an aggravating factor, and (3) considering exercise of the right to jury trial as an aggravating factor.

"Extraordinary mitigation." The structured-sentencing law [G.S. 15A-1340.13(g), -(g1)] allows departure from its felony-sentence-disposition guidelines in one circumstance: the court has discretion to impose an intermediate punishment instead of a prescribed active punishment if it finds that (1) "extraordinary mitigating factors of a kind significantly greater than in the normal case are present"; (2) these mitigating factors outweigh all aggravating ones; and (3) active punishment would be "a manifest injustice." However, extraordinary mitigation is prohibited for a Class A offense (first-degree murder), a drug-trafficking offense, and a defendant with five or more prior-record points.

Prior convictions and prior-record (conviction) levels. Structured sentencing uses prior-record levels along with the offense class to determine the sentence disposition and active-term range, as explained in the earlier example. In felony sentencing, the structured-sentencing law requires the prosecutor to "make all feasible efforts to obtain and present to the court the offender's full record" [new G.S. 15A-1340.14(f)], whereas the FSA has no such requirement, leaving the possibility that the court will not see the full record.

The higher the record level, the more serious the required sentence disposition is likely to be, and the higher the range of the minimum prison/jail term. For example, with a Class H felony like felonious breaking or entering, the presumptive range of 5 to 6 months for Prior Record Level I increases in steps to 16 to 20 months for Level VI. In felony cases, points are assigned to each prior conviction: 1 for a misdemeanor; 2 for a Class H or I felony (Class J felonies are abolished by the companion classification bill); 4 for a Class E, F, or G felony; 6 for a Class B, C, or D felony; and 10 for a Class A felony. Another point is added if all the elements of the present offense are included in the prior offense, and if the present offense was committed while the offender was on probation or parole, or serving or on escape from serving a sentence of imprisonment. The total conviction score determines the offender's prior-record level. Prior-record levels for felony sentencing are: Level I—zero points; Level II—1 to 4 points; Level III—5 to 8 points; Level IV—9 to 14 points; Level V—15 to 18 points; and Level VI—19 points or more. In misdemeanor sentencing, points are not used; the prior-conviction levels are I—no prior convictions; II—1 to 4 prior convictions (of any criminal offense); and III—5 or more prior convictions.

In felony sentencing, if the offender is convicted of more than one offense in a single court during a single week, only the conviction with the highest point total is used to determine prior-record level. In misdemeanor sentencing, if the offender is convicted of more than one offense in a single court during a single week or in a single district court session, only one of the convictions may be used. Convictions in other states are included along with those in North Carolina. Prior convictions may be proved by stipulation of the parties; by an original or copy of the court record; by records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or the Administrative Office of the Courts; or by "[a]ny other method found by the court to be reliable." The structured-sentencing law omits the provision in the FSA [G.S. 15A-1340.4(a)(1)o] that excludes from consideration conviction of "any crime that is joinable [i.e., part of the same transaction or scheme] . . . with the crime or crimes for which the defendant is currently being sentenced."

Sentencing for multiple convictions. The structured-sentencing law retains the present common law and statutory rule [see G.S. 15A-1354(a)] that terms of imprisonment run concurrently unless the court specifies that they run consecutively. Structured sentencing permits consecutive terms for multiple convictions with the following restrictions: (1) if the most serious offense is a Class 1 or 2 misdemeanor, the total length of the terms of imprisonment may not exceed twice the maximum term authorized for the class and prior-conviction level of the most serious offense involved; and (2) if all convictions are for Class 3 misdemeanors, consecutive terms are forbidden. The court also may consolidate offenses for judgment (sentence) as under present law; in such a sentence, the most serious consolidated offense is controlling, and the sentence disposition and prison/jail term (both minimum and maximum terms where a felony is concerned) must conform to the structured-sentencing guidelines for this offense.

Structured sentencing's effect on "sentence bargaining." Present law (G.S. 15A-1021 and -1023) authorizes "sentence bargaining" in which the defendant agrees to plead guilty in return for the prosecution's agreeing to recommend a particular sentence. The trial judge must indicate whether he or she approves the arrangement and will sentence accordingly; otherwise, the judge must refuse to accept the defendant's plea and must give the parties a chance to modify the arrangement. The FSA carefully protected the practice of sentence bargaining by allowing judges to omit written findings supporting a nonpresumptive prison/jail term if it was the product of plea bargaining.

The structured-sentencing law does not repeal the statutes authorizing sentence bargaining but may substantially reduce the incentives to engage in it. General Statutes 15A-1331(a), as amended by the new law, and new G.S. 15A-1340.13, -1340.16, and -1340.20, make clear that the sentencing judge must impose the sentence specified in the applicable structured-sentencing guidelines and must make written findings of aggravating and mitigating factors in felony sentencing, regardless of any plea bargain. Of course, the prosecutor could agree to recommend, for example, that the judge sentence from the mitigated range, or that certain mitigating factors be given special weight, but the judge would still have to make the findings and sentence according to the guidelines. In considering approval of a plea bargain concerning the sentence, the judge would have to indicate whether he or she would go along with the bargain but could *not* agree to impose a sentence not conforming to the guidelines. In contrast, under the FSA a sentence bargain can authorize wide variation from the presumptive term without judicial findings.

Modifying and Correcting Sentences

Present law does not allow a judge to modify a sentence once the term of court has ended, except to correct errors or to reduce the suspended prison/jail term if probation is revoked. The structured-sentencing law preserves present law regarding correcting errors in sentences. It amends the present statutes [G.S. 15A-1415(b) and -1442] to make clear that imposition of an unauthorized sentence disposition or prison/jail term, as well as an erroneous determination of prior-record level, can be corrected either at the trial-court level (in a motion for appropriate relief) or by appellate review. Structured sentencing still permits reduction of a suspended prison/jail term before it is activated, but the term must remain within the applicable guidelines.

Will structured sentencing produce another wave of sentence appeals? In 1981, when the FSA became effective, it brought on a large number of appeals of sentences because it required for the first time written findings that made the basis of many felony sentences reviewable on appeal; however, the volume of appeals dropped off sharply as North Carolina Supreme Court interpretation of the FSA became well understood by the legal community. Structured sentencing seems unlikely to have the effect on sentence appeals that the FSA initially had, for two reasons. First, structured sentencing's guidelines are so specific that there will be little to fight about on appeal, once offense class and prior record are established. Defendants can still argue that aggravating and mitigating factors have been found improperly, but there will be much less incentive to do so than under the FSA because the potential effect of finding the factors will be so much less. Second, most of structured sentencing's aggravating and mitigating factors, as well as its procedures for proving prior convictions, come from the FSA and have been worked over thoroughly by the state's appellate courts, whose interpretation probably will be followed under structured sentencing.

Execution of Sentences

Probation. Besides curtailing sentencing judges' power to impose probation and restricting the allowable terms of probation, the structured-sentencing law makes some important changes in the execution of a probation sentence.

Structured sentencing allows the court to delegate certain authority to the Division of Adult Probation and Parole of the DOC—in other words, to the probation officer. Under new G.S. 15A-1343.2, this delegated authority can be exercised only if the probation officer finds that the offender has failed to comply with a condition of probation imposed by the court. If the offender is sentenced to community punishment, the court may allow the officer to require the offender to (1) perform up to 20 hours of community service and pay the fee for supervision of the service by community-service coordinators, (2) report to the officer at a frequency determined by the officer, and (3) submit to "substance abuse monitoring or treatment." If the offender is sentenced to intermediate punishment, the court may authorize the officer to require the offender to (1) perform up to 50 hours of community service and pay the fee, (2) submit to electronic monitoring, (3) submit to "substance abuse monitoring or treatment," and (4) participate in "an educational or vocational skills development program." If the officer imposes any of these requirements, he or she may also reduce or remove them. These provisions permit delegation of power that up to now has been wielded exclusively by judges. But if the offender objects to the use of the delegated authority, he or she may move the court to review the officer's action; the offender must be notified that he or she has the right to seek this review.

The structured-sentencing law deals with an important problem in enforcement of probation conditions that has cropped up in recent years as the demand for prison space has outpaced the supply. At present, judges may be reluctant to revoke probation for a technical (noncriminal) violation of conditions, wanting to keep prison cells available for serious criminals, and many offenders know they will serve little time if their probation is revoked. Consequently, probationers are said to have become more likely to disobey conditions imposed by the court. The structured-sentencing legislation responds to this problem by making willful violation of a condition of probation, if intermediate punishment is involved, punishable as criminal contempt; under G.S. 5A-13, this violation (because not in the courtroom) would amount to indirect criminal contempt. Indirect criminal contempt

calls for "plenary proceedings" under G.S. 5A-15—a hearing in district or superior court that resembles a hearing to revoke probation under G.S. 15A-1345(e), except that the standard of proof is stricter. In plenary-contempt proceedings, the judge must find guilt of contempt "beyond a reasonable doubt," rather than simply evidence that "reasonably satisfies" him or her of guilt as in probation revocation.[11]

Treating probation violation as criminal contempt is intended to provide a quick punishment for a deliberate violation of probation where intermediate punishment is concerned. Under G.S. 5A-12, courts could sentence a person found in criminal contempt for a probation violation to a jail term up to thirty days[12] and a fine up to $500. No doubt probationers will want to avoid these sanctions. But the deterrent effect of the contempt approach may be less than hoped for, because: (1) the hearing procedure for indirect contempt, as just explained, involves at least as much work for the court as a probation-revocation proceeding; (2) the structured-sentencing law gives the probationer credit for any contempt jail time toward his suspended prison/jail term if his probation is subsequently revoked; and (3) probation cannot be revoked for the same conduct that resulted in the contempt punishment. It remains to be seen whether courts will utilize this new tool to punish probation violations, and whether it will improve compliance with conditions.

The structured-sentencing legislation retains present G.S. 15A-1341(c), which allows a probationer to "elect to serve his suspended sentence of imprisonment in lieu of the remainder of his probation." One view (not solidly established in North Carolina Supreme Court holdings) is that this provision is required because probation's validity rests on the offender's consent. Another view is that since suspension of sentence is an inherent power of the courts (albeit regulated by the General Assembly), the option to serve the suspended sentence is unnecessary.[13] At any rate, probationers still will be able to avoid compliance with the courts' conditions by going to prison/jail. But structured sentencing may reduce their incentive to do so, because felons on revocation must serve at least their full minimum prison/jail term, and misdemeanants must serve their full term minus no more than about 13 percent for "earned time" plus a small deduction for assigned work (if any). Their confinement, if they opt for prison, may be longer under structured sentencing than under present law.

Structured sentencing allows the court, in response to a probation violation in a community punishment, to impose further conditions of probation that amount to intermediate punishment. For example, having found that the probationer violated regular probation, the court could impose electronic monitoring. The structured-sentencing legislation does not change the present provisions of G.S. 15A-1344, which allow the court to modify conditions of probation after a hearing, for good cause. This leaves unclear whether the court could downgrade intermediate punishment to community punishment.

Present law [G.S. 15A-1344(d)] authorizes the court, in revoking probation, to reduce the suspended prison/jail term befofe activating it. The structured-sentencing law makes one change: the reduced term must remain within the range set by the statutory guidelines. For example, if the original term was in the aggravated range for the offense class and prior-record level, the reduced term also must be in that range.

Service of prison/jail terms: credits for time previously served, "earned time," and assigned work in jail. Under structured sentencing, offenders will continue to receive credit toward service of prison/jail terms for time previously served in connection with the prosecution that led to their prison/jail term—for example, for jail time while awaiting trial or probation-revocation proceedings—under present G.S. Ch. 15, Art. 19A.

General Statute 148-13 as amended by the structured-sentencing law allows felons and misdemeanants to reduce their prison/jail terms by "earned time" according to rules issued by the DOC and rates that apply to both prison and jail. Presumably this time will be awarded for good behavior and participation in assigned work, education, and treatment programs. Earned time reduces the felon's maximum term, but he or she must serve at least the minimum term [G.S. 15A-1340.13(d)] reduced only by credit for previous confinement in the case. For a misdemeanant, earned time reduces the single prison/jail term and cannot amount to more than four days per month served, a reduction of about 13 percent [G.S. 15A-1340.20(d)]. In contrast, under present law prison/jail terms may be reduced by up to 50 percent for good behavior and an additional amount (roughly 10 percent) for gained time through work or program participation, and misdemeanants (except impaired drivers) generally become eligible for immediate parole.

Offenders serving a *jail* term (most are misdemeanants), in addition to any earned-time credit they receive, may be given work credit by the jailer of what would amount to at most four days per month, if the inmate were assigned to work every day of the month.[14] Probably most jail inmates would receive considerably less than that, if any. The maximum credit a misdemeanant could receive toward a jail term would be four days per month earned time plus four days per month work credit, a reduction of about 27 percent.

Service of prison/jail terms: abolition of parole and establishment of post-release supervision. The structured-sentencing legislation repeals G.S. Ch. 15A, Art. 85A, authorizing parole of felons sentenced under the FSA. It also makes Art. 85, concerning parole for other offenders,

applicable only to terms for driving while impaired and life terms: parole for impaired drivers is left unchanged, and a life sentence will be possible only for a Class A felony, first-degree murder, if capital punishment is not imposed. Amendments to G.S. 15A-1371 and -2002 provide that the offender must serve 25 years on a life term before he or she becomes eligible to be considered for discretionary parole, and require the judge in a capital case to instruct the sentencing jury that a life sentence involves eligibility for parole after 25 years. This 25 years cannot be reduced except by credit for time previously served (for example, for time spent in jail awaiting trial). General Statute 15A-1372 as amended limits the period of parole for a person released from a life sentence to 3 years.

The structured-sentencing legislation repeals present parole laws regarding sentences other than life terms for all offenses except impaired driving. For offenders serving prison/jail terms for Class B through E felonies, new Art. 84A of G.S. Ch. 15A establishes "post-release supervision," a period of supervision after release from prison. Offenders other than Class B through E felons will not be eligible for post-release supervision but may receive earned time while incarcerated (as explained earlier).

Post-release supervision will be administered by the new Post-Release Supervision and Parole Commission, which replaces the present Parole Commission, and post-release supervision officers. The new commission's membership and procedures are the same as those of the present commission, but its authority is different because post-release supervision differs from parole; however, regarding parole from sentences for impaired driving and life sentences, it will continue to exercise the same authority as the present commission.

Under new G.S. Ch. 15A, Art. 84A, Class B through E felons must be released from prison/jail after serving their maximum prison term minus 9 months and minus any earned time they have accumulated; they are not allowed to refuse post-release supervision. The difference between maximum and minimum terms under the structured-sentencing guidelines is sufficiently great that Class B through E felons always will serve at least their minimum term before release, even if they receive the maximum allowable earned time. For example, consider an offender in Prior Record Level III, sentenced under the structured-sentencing presumptive guidelines [new G.S. 15A-1340.17(c) and -(e)] to a minimum term of 80 and a maximum term of 105 months for armed robbery, a Class D felony. The longest time this offender would serve (assuming he or she received no earned time) would be 105 months minus credit for any previous confinement in the case. The shortest time would depend somewhat on whatever rules the DOC adopted concerning earned time for felons and on how much time the offender earned, but in any event would not be less than 80 months minus credit for any previous confinement in the case.

Under structured sentencing, the period of post-release supervision must be six months but may be reduced by credit earned during supervision for compliance with "reintegrative conditions" (explained below) under DOC rules. The new commission may impose conditions of supervision, including most of those authorized in present parole. Otherwise, post-release supervision is quite similar to present parole, including the procedures for arrest and hearing on an alleged violation of conditions.

Refraining from further crime will be a condition of every release, as in current law. Structured sentencing authorizes other conditions of post-release supervision which it classifies as "reintegrative," "controlling," or "discretionary." "Reintegrative conditions" include working at suitable employment, undergoing medical or psychiatric treatment, attending or residing in a rehabilitation program, supporting one's dependents, and continuing study begun in prison toward a high-school diploma. "Controlling conditions" include not using illegal drugs, complying with court orders, making restitution under G.S. 148-57.1, not possessing a firearm, remaining within certain geographic limits, and reporting to the supervising officer as directed. "Discretionary conditions" are any other conditions that the commission believes are "reasonably necessary to ensure that the supervisee will lead a law-abiding life or to assist the supervisee to do so," a provision also found in present G.S. 15A-1374(a).

If the commission finds that the supervisee has violated a condition, it may continue supervision under the same or modified conditions; if the supervisee has violated a controlling condition or has repeatedly violated a reintegrative condition, the commission may revoke supervision. If the supervisee returns to prison, he or she must serve the remaining portion of his or her maximum term minus credit for any previous confinement as a result of the revocation proceedings and minus credit for earned time received during the re-imprisonment (no credit is given for the time free under supervision). He or she will continue to be eligible to receive earned-time credit toward the maximum term and may be re-released by the commission.

Classification of Offenses

The structured-sentencing legislation, Ch. 538 (H 277), and its companion measure, Ch. 539 (H 278), extensively reclassify misdemeanors (excluding impaired driving) and many felonies. Misdemeanors are assigned to Class 1, 2, or 3, defined by new G.S. 15A-1340.32(c), with authorized punishments as shown in the following table. The range of the suspended or active prison/jail term is shown in days.

Misdemeanor Sentencing Guidelines

Misdemeanor Class:	Level I: Zero Prior Convictions	Level II: 1 to 4 Prior Convictions	Level III: 5 or More Prior Convictions
Class 1	1–45 days (community punishment only)	1–45 days (community, intermediate, or active punishment)	1–120 days (community, intermediate, or active punishment)
Class 2	1–30 days (community punishment only)	1–45 days (community or intermediate punishment)	1–60 days (community, intermediate, or active punishment)
Class 3	1–10 days (community punishment only)	1–15 day (community or intermediate punishment)	1–20 days (community, intermediate, or active punishment)

Regarding felonies, the legislation retains the FSA's Class A through I, but abolishes Class J; most Class J felonies are assigned to Class I. Structured sentencing repeals G.S. 14-1.1, which sets limits on prison terms for felonies; the only limits will be those in the guideline tables in new G.S. 15A-1340.17, which depend on felony class and prior-record level. The following are some of the other notable changes in felony classification.

Repeal of minimum-term and minimum-service-of-time provisions. Present law requires certain minimum prison terms to be imposed on, and certain minimum periods of time to be served in prison by, persons convicted of armed robbery, burglary, a repeated felony using a deadly weapon, first- and second-degree sexual exploitation of a minor, sale of a controlled substance near school property, and possession of a controlled substance in prison or jail. The structured-sentencing law repeals the present provisions and puts these offenses into its guidelines along with all other offenses. For example, armed robbers no longer must be sentenced to at least 168 months active imprisonment and serve at least 84 months (reduced by "gain time"); under the structured sentencing guidelines, as Class D felons they will have to serve at least the minimum the judge imposes, which will be no less than 33 and no more than 158 months depending on prior convictions and findings of aggravating and mitigating factors.

Drug trafficking. Structured sentencing amends G.S. 90-95(h) to make drug trafficking an exception to its guideline scheme: it sets fixed minimum and maximum terms for each drug-trafficking offense, regardless of prior convictions and mitigating or aggravating factors, and leaves the present minimum fines in place. For example, a person convicted of selling one thousand dosage units of methaqualone must receive a minimum term of 35 months and a maximum of 42 months, and a fine of at least $25,000. Under present law, this offender must receive a term from 84 to 180 months and the same fine, but the actual time served probably would be less than half of the term imposed because of good time, gain time, and parole.

Habitual felons. General Statute Ch. 14, Art. 2A, regarding sentencing of habitual felons (persons with three prior felony convictions who are being sentenced for a fourth) is revised by the structured-sentencing legislation. A person will become a habitual felon only if no more than one of his or her three prior felonies is in Class H, I, or J. Furthermore, he or she will not be subject to enhanced punishment under G.S. 14-7.6, as amended, unless the fourth offense is Class E through I. If it is, he or she must be punished as a Class D felon under the structured-sentencing guidelines. The three priors used to establish habitual status do not count toward the prior-record level. If the fourth offense is Class D or higher, no special punishment provisions will apply. In present G.S. 14-7.6, any three prior felonies and any current felony subject the offender to habitual-offender sentencing; a prison term of at least 168 months and service of at least 84 months (minus gain time) are mandatory.

Second-degree murder. Chapter 539 amends G.S. 14-17 to upgrade second-degree murder from Class C to Class B. At present, the statute allows a term of life (with parole eligibility after serving approximately 120 months) or up to 600 months (which can be reduced more than half by good time and gain time). Under structured sentencing, the minimum term must be from 81 to 338 months, depending on prior convictions and aggravating and mitigating factors, and all of it must be served.

Manslaughter, rape, and certain felonious assaults. Chapter 539 amends G.S. 14-18 to upgrade voluntary manslaughter from a Class F to a Class E felony, and involuntary manslaughter from Class H to Class F. General Statute 14-27.3 and -27.5 regarding second-degree rape and second-degree sexual offense are amended to upgrade these offenses from Class D to Class C. General Statute 14-32 is amended to raise assault with a deadly weapon with intent to kill inflicting serious injury from Class F to Class C; and assault with a deadly weapon inflicting serious injury and assault with a deadly weapon with intent to

kill from Class H to Class E. Felonious assaults on handicapped persons under G.S. 14-32.1 are all upgraded by two or three felony classes.

Simple possession of less than one gram of cocaine. Chapter 539, § 1358.1, and Ch. 538, § 30, amend G.S. 90-95(d)(2) to restore former law making simple possession (without intent to sell or deliver) of less than one gram of cocaine a misdemeanor and to classify the misdemeanor as Class 1. Simple possession of one gram or more of cocaine continues to be a Class I felony.

Structured Sentencing's Expected Effects on Prison, Jail, and Probationer Populations

Throughout the development of its sentencing guidelines, the Sentencing Commission, as required by law, projected the effects of these guidelines on the correctional system's prison, jail, and probationer populations. Its latest projections, based on the version of structured sentencing finally enacted on the last day of the 1993 session, are as follows. With the expenditure of all remaining authorized prison bond funds, prison capacity is expected to reach 26,248 by June 30, 1997;[15] under structured sentencing, the number of state prisoners is predicted to reach 26,502 by June 30, 1999, only 1 percent over expected capacity (26,248). After that date, however, the commission expects that the number of prisoners will exceed the capacity due to more convictions.[16]

The commission predicts that the number of sentenced *jail* prisoners, which averaged 2,185 in mid-1992 according to the Department of Human Resources,[17] will be 3,006 in mid-1995 (six months after structured sentencing goes into effect), and then 3,421 by mid-1999 under structured sentencing. The commission does not expect these numbers to strain jail capacity, taking into account new space that will have been built. This expectation is based on the commission's assumption that unsentenced jail prisoners (primarily pretrial detainees) will continue to constitute three-fourths of the county jail population.

What about probationers? The commission projects the number of offenders annually placed on "intermediate punishment" (supervised probation involving certain conditions such as electronic monitoring) to go from 9,233 in 1993–94 to 17,934 by 1998–99, an increase of 94 percent. Most of this projected increase (7,230 of 8,701) is attributed to the structured-sentencing law rather than to other growth. But the commission expects structured sentencing to *reduce* the growth of the number of offenders annually placed on "community punishment" (ordinary supervised probation); the commission predicts this number will grow about 13 percent under structured sentencing (from 36,694 in 1993–94 to 41,528 by 1998–99); without structured sentencing it would grow 16 percent.

Conclusion: Future of Structured Sentencing and the Sentencing Commission

Looking back at the history of the FSA makes the 1993 structured-sentencing law—which replaces the FSA—all the more remarkable. Structured sentencing was enacted only seven months after initial introduction while the FSA took four years—yet structured sentencing will make changes far more radical in some respects than those made by the FSA. Evidently, support for determinate sentencing has increased. But it remains to be seen whether the 1993 version of this philosophy will stay undiluted any longer than the 1981 version (the FSA) did, especially if the pressure on prison capacity continues to build. The FSA was in effect only two years before the General Assembly found it necessary to restore parole discretion to deal with prison crowding.

What happens to the Sentencing Commission now that it has completed this major piece of work? The legislation creating it provided that once it completed its primary duties, it was to

> monitor and review the criminal justice and corrections systems in this State to ensure that sentencing remains uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing practices, and . . . recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State. [G.S. 164-43(d)]

So the commission should have plenty to do. Chapter 321 (S 27), § 200.1, extends the commission's life until July 1, 1994. Chapter 535 (H 1035) requires it to study restitution and report its findings to the 1994 General Assembly, and adds to its membership a North Carolina resident who must belong to the Justice Fellowship Task Force (a private reform group), appointed by the commission chair.

Criminal Justice Partnership Act

As part of its sentencing package, the General Assembly enacted the Criminal Justice Partnership Act (Ch. 534, H 281), effective January 1, 1994; the grants that it authorizes will not be effective until July 1, 1995. Essentially the act establishes a cooperative state-county program of grants for community-based correctional programs but provides no money for the grants (the original appropriation was deleted from the measure before it passed). Thus it is a vehicle for spending state community-corrections funds should they become available. The intent is to provide more options for community and intermediate punishments (as explained earlier, structured sentencing is expected to substantially increase the use of such punishments) and for post-release

supervision, and to promote coordination between state and county government. The goal of the community-based correctional programs is to reduce offenders' recidivism, probation revocations, alcoholism and drug dependency among offenders, and the cost to the state and counties of incarceration.

The act creates a Criminal Justice Partnership Advisory Board with twenty-one members serving three-year staggered terms, including one member each from the House and Senate, a superior court judge, a district court judge, other criminal justice officials, a crime victim, a "rehabilitated ex-offender," and representatives who provide services to victims and offenders. The governor, lieutenant governor, chief justice of the supreme court, Senate president pro tempore, and House speaker are each to appoint specific members. The board is to advise the secretary of correction concerning community-based programs: the need for new programs, criteria for evaluation, an annual plan for grants, and standards and rules. Under the act, the DOC must provide technical assistance to applicants for planning and operating community-based correctional programs and enter into contracts with counties to operate such programs. A county may not apply for funds without creating a local advisory board or joining with other counties in a multicounty board; the act requires these boards to consist of at least ten members reflecting various parts of the criminal justice system, the service community, and the public.

Other Legislation Affecting Corrections

Prisons

Construction. Of the $200 million in prison bond funds approved in a statewide election in 1990, $87.5 million remained unspent at the beginning of 1993. Chapter 550 (H 233) assigns the remaining bond proceeds to a variety of new prison construction and expansion of existing prisons. The result will be 3,712 additional "beds" (spaces for inmates). Ninety of these will be for a new "boot camp" facility in the western part of the state. The construction includes a replacement for the aging Polk Youth Center in Wake County, which under Ch. 561 (S 26), § 73, will be renovated for use as a minimum-custody facility after its replacement is built.

In the $87.5 million prison construction, the Office of State Construction may require contractors to use prison inmates as up to 20 percent of their work force, and it must report quarterly on this employment of inmates to the Joint Legislative Commission on Governmental Operations, the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the Legislative Services Office.

Cap. Chapter 91 (S 982) amends G.S. 148-4.1 to raise the prison cap currently 20,900, to 21,200 as of June 1, 1993; to 21,400 by December 1, 1993; and to 21,500 by April 1, 1994.

Correctional facilities and programs for female offenders and their children. Chapter 321 (S 27), § 170, as amended by 561 (S 26), § 75, allows the DOC to use up to $5 million from the Repair and Renovation Reserve in the Office of State Management and Budget to repair and renovate its facilities. The measure specifically transfers $412,000 from the reserve to renovate Black Mountain Women's Correctional Center.

Chapter 321 (S 27), § 172, requires that a visiting/operations center be built at the North Carolina Correctional Institution for Women from the prison bond proceeds already allocated for repairs at that prison. This center must include space for the Mothers and Their Children (MATCH) program.

Section 173 of the same act requires the DOC to use $400,000 in each year of the 1993–95 biennium to support Greensboro's Summit House program, a community-based residential alternative to incarceration for mothers and pregnant women; the support includes expansion of nonresidential day-center services. The DOC also must spend $150,000 in 1993–94 to plan and select sites for Summit House satellite programs in Mecklenburg and Wake counties and $500,000 in 1994–95 to operate these programs. Counties must match the appropriated funds and provide a site for each program. Summit House must report quarterly during the 1993–95 biennium to the Joint Legislative Commission on Governmental Operations on its expenditures, clients served, and effectiveness, and on planning and site selection for the satellite programs. Section 174 also requires the DOC to use $200,000 in each year of the biennium to support Harriet House, a transitional home for female ex-offenders and their children; this program, too, must report quarterly to the Joint Legislative Commission on Governmental Operations.

Consolidation of prison units. The General Assembly's Government Performance Audit Committee (GPAC) recommended consolidating smaller prison units to reduce administrative costs. To begin this consolidation, Ch. 321 (S 27), § 177, requires the DOC to close prison units in Granville, Halifax, Person, Warren, and Vance counties and replace them with appropriate facilities.

Prison enterprises. "Prison enterprises" are industries in the state prison system using inmate labor to produce goods and services primarily for state agencies, which must give preference to such products in purchasing (see G.S. 148-70, -26, -18). Chapter 321 (S 27), § 175, amends G.S. 148-18(a) to raise from $1 to $3 the limit on daily pay for prisoners employed in state prison enterprises, and to require that the DOC provide for prisoner pay either at hourly rates

or on the basis of production quotas established by prison enterprises. Chapter 561 (S 26), § 76, requires the Department of Administration, in consultation with the DOC, the Citizens for Business and Industry, the Association of County Commissioners, the School Boards Association, and the League of Municipalities, to develop a policy concerning the manufacture of goods and provision of services by prison enterprises, to distribute the policy to all state agencies and departments, and to submit it for General Assembly approval by March 15, 1994.

Inmate education. Chapter 321 (S 27), § 105, requires the State Board of Community Colleges to develop and report to the General Assembly by May 1, 1994, a plan to deliver appropriate education in correctional facilities, taking into account the mobility of the prison population, and requires inmate education programs to report full-time–equivalent (FTE) students on the basis of contact hours rather than student membership hours.

Inmate self-esteem program. Chapter 59 (S 46) requires the DOC to undertake a pilot program for inmates based on "developing positive mental attitudes through self-esteem and self-discipline" to "affect the incidence of institutional disciplinary infractions and recidivism." The pilot must involve at least six sites: one for women, two for youth, and three for adult men. The department must report on the pilot program by May 1, 1994, to the Joint Legislative Commission on Governmental Operations and the General Research Division of the Legislative Services Office. Authorization for the pilot program expires June 30, 1995.

Private confinement facilities. Chapter 321 (S 27), § 176, forbids adding any for-profit, privately owned or operated confinement facilities to the state prison system without approval by the General Assembly. But it allows the secretary of correction to issue a request for bids to determine terms or conditions under which private for-profit or nonprofit firms would operate treatment centers across the state (totaling five hundred beds) for prisoners needing treatment for alcohol or drug abuse. The secretary may not enter into such contracts but is to report the results of the bids by April 15, 1994, to the House speaker, Senate president pro tempore, chairs of the House and Senate Appropriations Committees, chairs of House and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

Credit to counties for certain medical expenses of "safekeepers." "Safekeepers" are prisoners transferred from county jails to state prison, under G.S. 162-39, because of jail crowding or other unfit conditions. Chapter 561 (S 26), § 74, amends the 1991 Session Laws, Ch. 983, § 2, to provide that counties that reimbursed the DOC for extraordinary medical expenses of safekeepers before the effective date of that act are to receive credit for the earlier payment, which will become a setoff against such expenses on and after July 1, 1993.

Probation, Parole, and Other Community Corrections

Community Service Work Program transfer to DOC; unified administration of community correctional programs. The Community Service Work Program, now in the Department of Crime Control and Public Safety, supervises community service performed by offenders as a condition of probation, parole, or deferred prosecution.[18] Chapter 321 (S 27), § 178.1, states the General Assembly's intent to "consider action" during 1994 on the GPAC recommendations that the Community Service Work Program be transferred from the Department of Crime Control and Public Safety to the DOC, and that all community corrections be consolidated "under a single administrative structure." Section 179 of the same bill requires the Department of Crime Control and Public Safety to report quarterly in 1993–94 and 1994–95 to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the number of community-service workers available during each month of the preceding quarter to repair and maintain public parks.

Community-penalties programs. Community-penalties programs prepare sentencing plans for defendants likely to be sent to prison, by assessing their prospects for alternative sanctions like restitution and community service. Most of the programs are operated by private nonprofit agencies under contract with the Administrative Office of the Courts. Chapter 321 (S 27), § 189, as amended by Ch. 561 (S 26), § 78, allocates $1,918,912 of Judicial Department appropriations for 1993–94 and again for 1994–95 to support existing community-penalties programs or to create new programs. The Judicial Department must report annually to the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division on the "administrative expenditures of the community penalties programs."

Present G.S. 15A-1342(a) sets a five-year limit on a term of probation but allows the court to extend the term beyond five years with the probationer's consent, for at most an additional three years, to allow the offender to finish paying restitution or to complete medical or psychiatric treatment ordered as a condition of probation. Chapter 84 (H 696) amends this section to require a statement that probation may be extended on any probationary judgment form provided to an offender on supervised probation.

Parole Commission: new members, staggered terms. Chapter 337 (S 633) ended the terms of the five members of the Parole Commission effective June 30, 1993. The Governor is to appoint five new members effective July 1, 1993;

three of these will have three-year terms, and two will have four-year terms. Thereafter, all replacement appointees will have four-year terms.

Drug-education school fee. Under present G.S. 90-96(a1), courts may require probationers in certain circumstances to participate in local drug-education programs operated by the Department of Human Resources under G. S. 90-96.01. Chapter 395 (H 499) raises the fee paid by participants from $100 to $150.

Notes

1. For information on the current law of sentencing and on the history of the Fair Sentencing Act, see the author's book LAW OF SENTENCING, PROBATION, AND PAROLE IN NORTH CAROLINA (Chapel Hill, N.C.: Institute of Government, University of North Carolina, 1991) and its 1993 supplement.

2. See Stevens H. Clarke, *North Carolina's Growing Prison Population: Is There an End in Sight?* POPULAR GOVERNMENT 56:4 (Spring 1991): 9–19. From 1975 to 1992, the state prison population increased by about 60 percent. The population of local jails grew much faster, quadrupling during the period. See Stevens H. Clarke and Emily Coleman, *County Jail Population Trends, 1975–92*, POPULAR GOVERNMENT 59:1 (Summer 1993): 10–15.

3. See REPORT OF THE SPECIAL COMMITTEE ON PRISONS: FINAL REPORT TO THE 1989 GENERAL ASSEMBLY OF NORTH CAROLINA, *1990 Session* (Raleigh, N.C.: May 9, 1990).

4. For information on the cap's history and effects, see Stevens H. Clarke, *North Carolina's Prison Population Cap: How Has It Affected Prisons and Crime Rates?* POPULAR GOVERNMENT 58:2 (Fall 1992): 11–22.

5. 1989 N.C. Sess. Laws (Reg. Sess. 1990), ch. 1076, codified as N.C. GEN. STAT. §§ 164-35 through -45.

6. 1991 N.C. Sess. Laws (Reg. Sess. 1992), ch. 816.

7. This tougher version was in H 280 and S 401, 1993 Session, as originally introduced.

8. It is unclear whether the offender's consent is required to make a probation sentence valid.

9. "Present in the offense," a phrase not used in the FSA, suggests that the structured-sentencing law intends to limit consideration to circumstances of the crime itself, but in fact many of its factors concern the offender in relation to the offense.

10. Being on pretrial release in connection with a misdemeanor charge already had been upheld as a nonstatutory aggravating factor under the FSA. State v. Whitaker, 100 N.C. App. 578, 397 S.E.2d 372 (1990).

11. State v. Duncan, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967).

12. If the probationer serves jail time for contempt for a probation violation, new G.S. 15A-1343.2(g) requires the Department of Correction to pay for the confinement.

13. See STEVENS H. CLARKE, LAW OF SENTENCING, PROBATION, AND PAROLE IN NORTH CAROLINA, and note 1.

14. The jail-work-credit provision is in N.C. Gen. Stat. § 162-60 as amended by the structured sentencing act. Most sentenced jail prisoners are misdemeanants. The rare felon serving his time in jail could conceivably earn work credit, but this would not reduce his minimum term; see new G.S. 15A-1340.13(d).

15. The source for this estimate is Ms. Carolyn Wyland of the General Assembly's Legislative Services Office, Fiscal Research Division, provided at the author's request by Dr. Robin Lubitz, director of the Sentencing Commission.

16. Data provided by Dr. Robin Lubitz at the author's request.

17. See Clarke and Coleman, *supra* note 2.

18. For information on this program, see Anita L. Harrison, *North Carolina's Community Service Program: Putting Criminal Offenders to Work for the Public Good*, POPULAR GOVERNMENT 58:3 (Winter 1993): 30–38.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 2,378 copies of this public document at a cost of $1,180.20, or $0.50 per copy. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.

♾ This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.