The Justice Reinvestment Act in North Carolina and Its Impact on Sentencing

Justice Reinvestment is a nationwide effort to reduce correctional spending and reinvest those savings in community programming that can increase public safety. Many states have worked with the Council of State Governments (CSG) on identifying and addressing the specific challenges faced by their criminal justice systems. In 2009, North Carolina requested technical assistance from CSG to develop solutions for its growing prison population and correctional spending. Since 2000, North Carolina’s prison population had been increasing, despite a decline in arrests and crime rate, and was projected to exceed prison capacity. CSG conducted an analysis of North Carolina’s criminal justice system and developed a framework that focused on three main objectives: (1) strengthen probation supervision, (2) hold offenders accountable in meaningful ways, and (3) reduce the risk of reoffending. The recommendations from CSG were included in the Justice Reinvestment Act (JRA), passed by the General Assembly in 2011. Some provisions of the JRA were designed to make immediate reductions to the prison population, such as limiting a probationer’s eligibility for return to prison, and some provisions focused on long-term reductions such as reducing offenders’ risk of reoffending through more targeted supervision. Five years after its enactment, it is possible to make some observations related to the JRA’s impact on the criminal justice system. The impact of the JRA on post-sentencing laws and policies has been substantial, while its impact on sentencing, less so.

It is difficult to consider the impact of the JRA on sentencing in North Carolina without first considering the existing sentencing structure in the state. In 1994, North Carolina enacted the Structured Sentencing Act, a mandatory guidelines system. Prior to its establishment, North Carolina’s criminal justice system was in crisis and facing the threat of a federal takeover. Prisons were overcrowded, parole was heavily relied upon, and the crime rate was climbing. As part of the solution, the General Assembly created the Sentencing and Policy Advisory Commission (the “Commission”) and charged the Commission with developing a sentencing structure that would prioritize the use of criminal justice resources and create a more reliable system. The Commission worked for over three years to create a structure that would allow for proportionality, uniformity, certainty, and predictability. To do so, the Commission established and relied on the following principles of Structured Sentencing:

- **Sentencing policies should be rational:** Sentences should be proportional to the severity of the crime as measured by harm to the victim and the offender’s prior record level.
- **Sentencing policies should be truthful:** The time an offender serves should bear a close and consistent relationship to the sentence imposed.
- **Sentencing policies should be consistent:** Similarly situated offenders should receive similar sentences.
- **Sentencing policies should set resource priorities:** The use of prisons and jails should be prioritized for violent and repeat offenders, whereas community programs should be first utilized for non-violent offenders with little or no prior record level.
- **Sentencing policies should be balanced with correctional resources:** Policies should be supported by adequate prison, jail, and community-based resources.

From these principles, the Commission developed the framework for Structured Sentencing. A key component of Structured Sentencing is the Felony Punishment Chart, which embodies the proportional approach to offenses and offender’s criminal history. Offenders are sentenced based on offense class and prior record level, which is determined by a weighted calculation of the offender’s criminal history. Offenders with increasing severity of offense class and/or prior record level are subject to harsher penalties in a true stair-step model. The combination of offense class and criminal history places the offender within a box on the Felony Punishment Chart, and judges must select a sentence from those authorized in the box. Sentences authorized in the boxes specify disposition, such as active or non-active, as well as sentence lengths, which are organized by ranges (mitigated, presumptive, or aggravated). Having these parameters of how offenders can be sentenced creates a uniquely predictable system, which allows the state to anticipate resource needs and address potential capacity issues by way of the Commission’s consistently accurate prison projection model.

Although there have been some modifications to sentencing laws since the passage of the Structured Sentencing Act, no piece of legislation since has had quite the impact...
on the criminal justice system as the passage of the JRA in 2011. The majority of the changes under the JRA focused on ways to reduce the prison population in the post-sentencing phase. The reduced focus on sentencing may have been in part because the existing sentencing structure already incorporated sentencing policies that addressed these goals, such as the prioritization of the use of prison resources for the most serious offenders. As such, the few modifications related to sentencing were minor and were not necessarily designed to affect the identified goal of prison population reduction. The sentencing provisions modified or created in the JRA included a revision to the existing habitual felon status offense, the addition of a new habitual status offense, the creation of Advanced Supervised Release (ASR), and the expansion of supervision to all felons exiting prison.

It appears that each of these sentencing provisions has some degree of conflict with North Carolina’s Structured Sentencing scheme and the principles that drive it. Some of the conflicts existed prior to the JRA. For the habitual felon offense, the conflicts between the provision and Structured Sentencing pre-dated the JRA, and the JRA modifications actually brought the statute more in line with Structured Sentencing. In the case of habitual breaking and entering and ASR, the conflicts with the existing framework may be affecting overall usage of the provisions, preventing their use from having a noticeable impact on the system. For the expansion of post-release supervision (PRS), which is now a mandatory requirement for all felony sentences in North Carolina, the conflict with the current scheme raises questions about the potential impact on resources and their most effective use. Although the purpose of these provisions may not have been to address prison capacity, each one has the capability to affect the system in the future, to varying degrees. While it is too soon for many of the outcomes of the JRA to be measured, this article will offer initial analysis and observations about the aforementioned sentencing provisions, their usage, and the impact that usage may have on the criminal justice system.

I. Habitual Status Offenders

Habitual status offender laws in North Carolina pre-date the enactment of Structured Sentencing. These laws enhance the punishment class for repeat offenders and are designed to address both deterrence and incapacitation goals for offenders. Under the JRA, one of the existing habitual status offender laws was modified and another habitual status offense was created. This section examines how the habitual status laws have been implemented by practitioners in the field, and how these provisions fit within the existing framework of Structured Sentencing.

A. Habitual Felon

1. Overview and Purpose of the Habitual Felon Law.

Prior to the JRA, North Carolina’s habitual felon law provided that a person qualified as an habitual felon upon the commission of their fourth offense (known as “the underlying felony”), if that person had three qualifying prior felony convictions (known as “predicate offenses”). At the time, all habitual felons were punished as Class C felons, regardless of the class of the underlying offense. CSG recommended that the habitual felon law be amended to adopt a proportional approach in which offenders would be punished at a class four classes higher than the underlying offense, but in no case higher than a Class C. This recommendation was incorporated into the JRA and went into effect for offenses committed on or after December 1, 2011. Adopting a proportional approach to the sentencing of habitual offenders affected the punishment classes only for defendants with underlying Class H or I felonies (now punished as a Class D or E, respectively); Class D, E, F, and G offenses are still punished as a Class C felony.

CSG did not expressly state the purpose behind the modification of the habitual felon law. However, the proportional approach may have been viewed as a way to reduce the prison population, because some habitual felons would now receive shorter sentences under the new law. It may also have been a way to counterbalance the addition of a new habitual status offense of habitual breaking and entering, discussed below. Regardless of CSG’s intent in recommending the changes, the habitual felon recalibration seems to be well received, as shown by usage in the field.


When CSG analyzed North Carolina’s criminal justice system in 2009, it noted that habitual felon convictions were on the rise, up 25 percent from FY2005 to FY2009. During that same time period, felony convictions overall had been increasing. The majority of habitual felon offenders were low-level felons receiving mitigated sentences. Focus groups reported that the practice of sentencing in the mitigated range was a result of plea offers; prosecutors frequently offered to agree to a sentence in the mitigated range in exchange for a guilty plea.

After the recalibration of the law under the JRA, there was a 16.4 percent increase in habitual felon convictions. In contrast to the increase reported by CSG from 2005 to 2009, this increase in convictions occurred while the overall number of felony convictions was declining. This increase could be due to the positive reception of the revised law by the prosecutors. Prosecutors, in general, reported support for the proportional approach, finding it to be more fair, which helped them in deciding whether to pursue the status offense for an eligible defendant.

Currently, the majority of habitual felon offenders are still felons with underlying offenses in the lowest offense classes, and the majority are sentenced in the mitigated range. If sentencing in the mitigated range is a result of plea offers, prosecutors may be continuing to use offers in the mitigation range to offset the habitual felon policies their offices have adopted. Reports from the field indicate that some area offices have mandatory filing policies on all defendants that qualify, while some areas report that once the indictment is filed, prosecutors are prohibited from pleading the indictment down. As such, an offer in the...
mitigated range may be one of the few concessions a prosecutor has to offer in the negotiation process.

Despite the noticeable increase in the usage of the habitual felon status offense, this group of offenders has not impacted the prison population to a meaningful degree. This is likely due to some of the habitual felon offenders receiving shorter sentences under the JRA, as well as the continued practice of sentencing in the mitigated range.

3. Potential Future Impact. Notwithstanding opinions about the status offense itself, the modifications to the habitual felon law made under the JRA seems to be a universal win. It makes the status offense more fair by adopting a more proportional approach to the punishment class, which offers some benefits to defendants. This approach also better matches the severity of the punishment to the severity of the offense, a key principle of Structured Sentencing. It remains a useful and popular tool for the prosecutors (as shown by the increase in usage) but without significant prison impact.

However, changes in sentencing practices could upset this current balance. For example, if the reason the majority of sentences are in the mitigated range is due to prosecutors’ plea agreement practices, then a change in prosecutor practices could result in longer sentences, and in turn, affect the prison population. Moreover, if habitual felon convictions continue to rise, the shorter sentences in the mitigated range might not be enough to offset the overall impact. Continued monitoring of plea and sentencing practices will be important to evaluate the provision and to ensure that it continues to be supported by available correctional resources.

B. Habitual Breaking and Entering

1. Overview and Purpose of the Habitual Breaking and Entering Law. The habitual breaking and entering status offense was created under the JRA in response to prosecutors’ feedback regarding sentencing options for this type of offender. Felony breaking and entering, a Class H felony, is consistently the most frequent felony conviction in North Carolina. Because it is one of the lowest-level felonies, an active punishment is not required until the defendant reaches the most serious prior record level. Further, if the defendant is ordered to serve an active sentence, it is relatively short. Prosecutors in CSG focus groups expressed frustration over the sentencing options available for this type of offender. They felt breaking and entering felons were notorious recidivists, often committing the same type of crime.

Prior to the JRA, the prosecution’s only recourse for these offenders was to wait until the defendant qualified for the habitual felony status offense, which as discussed above, occurs upon the defendant’s fourth felony conviction. The JRA responded by creating the habitual breaking and entering status offense, which provided that a defendant could be indicted as this status offender upon their second conviction for a breaking and entering offense. The offenses that qualify an offender for this status offense are defined by statute to include several breaking and entering offenses.

The punishment class for this new offense did not adopt the proportional approach taken in the habitual felon law revision. Instead, the habitual breaking and entering status offense changes the punishment class of the underlying felony to a Class E felony, regardless of the punishment class for the underlying felony. Class E felons with the most minimal criminal histories are eligible for a non-active sentence, whereas offenders with more significant criminal history face a mandatory active sentence.

2. Usage of the Habitual Breaking and Entering Law. So far, the habitual breaking and entering offense has seen less usage than its cousin, the habitual felon status offense. In FY2015, only 154 defendants were convicted of habitual breaking and entering, which represents about 0.5 percent of the convictions in the state. The number of convictions has been holding steady, with the average number of convictions hovering in the 150s since FY2014. In 2015, habitual breaking and entering only accounted for 146 prison entries (less than 1 percent of the prison population) and one entry to probation.

It is unclear why this provision is not more frequently used, despite appearing to address a concern voiced by prosecutors around the state and the consistent frequency of convictions for breaking and entering every year. It could be that the law is still relatively new and that prosecutors need time to adjust their plea practices and strategies to incorporate the new offense; but as time continues to pass, this seems less likely. It could be that the relatively lower level of the severity of the breaking and entering offense plays into the plea practices, with prosecutors using the threat of pursuing the habitual breaking and entering status to get a plea more quickly for the underlying felony (most often a Class H).

Another theory is that although the district attorneys wanted a way to more severely punish this class of offenders, they are uncomfortable with the provision as written. Qualifying for the habitual breaking and entering status offense on the second offense is the quickest route to an habitual status offense in North Carolina statutes. As addressed earlier, a defendant can be indicted as a habitual felon on his fourth offense. The state’s other habitual offense, unaffected by the JRA, is the violent habitual offender. A defendant can be indicted as a violent habitual offender upon his third qualifying offense. It is unclear why repeat breaking and entering offenders have a quicker path to being habitualized than the offenders committing the more serious crimes that could be included in the other habitual status offenses.

Unlike habitual felons, the majority of habitual breaking and entering defendants are sentenced in the presumptive range. This could be indicative of a different plea practice than that used with habitual felon offenders. Sentencing in the presumptive range could be viewed as confirmation of the prosecutor’s frustrations with the class of offenders, or it could be that some other agreement has been reached,

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such as a prosecutor agreeing not to pursue the harsher habitual felon indictment in exchange for the guilty plea. Limited information is available regarding explanations for the low use of the habitual breaking and entering offense, and with the small number of convictions and sentences imposed, there may not be adequate data to inform its use going forward.

3. Potential Future Impact. Even though the habitual breaking and entering offense is not currently used with the same frequency as the habitual felon offense, its usage has the potential to affect the system in other ways. How it interacts within the existing framework of plea practices could give a more complete picture of its impact. For instance, if defendants plead to the Class H felony to avoid an indictment for habitual breaking and entering, data may show an increase in Class H breaking and entering felonies overall. The data may also support this theory by showing that cases that qualify for habitual breaking and entering are more quickly resolved than other felonies. Perhaps having the option to pursue the habitual breaking and entering offense has been useful in negotiations, even if the number of convictions for the offense itself is minimal.

However, if the habitual breaking and entering offense grows in popularity, this sentencing option could have an impact on the prison population. As mentioned above, breaking and entering offenders represent the largest group of offenders in terms of felony convictions and are likely to receive a non-active sentence; in FY2014/2015, 65 percent of defendants convicted of breaking and entering as an indictment for habitual breaking and entering as a Class H felony received a non-active sentence. If more of these defendants were indicted and convicted of the habitual breaking and entering offense as Class E felons, these offenders would be more likely to receive an active sentence, and a longer one at that. How much of an impact this sentencing provision makes will depend on changes in the usage. Continued monitoring and increased understanding of plea practices will be important in evaluating its potential impact and prioritizing the use of limited resources.

II. Advanced Supervised Release

A. Overview and Purpose of Advance Supervised Release

Of all the provisions included in the JRA, only one expanded sentencing options for the judiciary—ASR. The judge decides at sentencing whether to order an eligible offender to the ASR program in prison. If the prosecutor objects, the judge cannot order an offender to the program. Offenders ordered to the ASR program receive priority enrollment into the existing programs within prisons. If the offender completes the program successfully, or is unable to do so through no fault of his own (e.g., no prison programs are offered at that location), the offender will be released at a reduced minimum sentence.

For the offender to be eligible for the program, he must be ordered to an active sentence, and fall into one of the following felony classes and prior record levels (PRL): for Class D offenders, PRL I–III; for Class E offenders, PRL I–IV; for Class F offenders, PRL I–V; and for Class G and H offenders, PRL I–VI. Class A, B1, B2, C, and I offenders are not eligible for ASR. As stated by CSG, this tool was created to incentivize offenders to complete prison programming, which could reduce their likelihood of reoffending. Although it was not the stated purpose of ASR, it could affect the prison population by creating the opportunity for early release for offenders sentenced to the program.

B. Usage of Advanced Supervised Release

At this time, progress toward the intended goals of ASR is marginal, due to the limited usage of this sentencing option. In 2012, the year after the JRA was adopted, only 152 inmates were ordered to the ASR program at sentencing. That number declined over the next two years, with a slight increase in 2015, when 75 inmates were ordered to the ASR program. Of the 36,902 inmates in North Carolina prisons on December 31, 2015, only 168 of those inmates had ASR sentences.

The most obvious reason for the tool’s infrequent use stems from the provision that allows the prosecutor to object to the order and prevent a defendant from being enrolled. Prosecutors across the state reported objections to ASR, with their reasons falling largely into two camps. Some prosecutors objected to ASR on a fundamental basis; others reported they objected because they had not seen a case yet they thought warranted ASR. Regardless of the reason, with prosecutors holding the ultimate trump card in their hands, their opposition appears to have stalled participation in the program.

Some prosecutors who objected to ASR on principle found ASR to be in conflict with the principles of Structured Sentencing, namely that sentencing policies should be truthful. The ASR program offers the only possible sentence option below the minimums prescribed by the Felony Punishment Chart. Prosecutors reported relying on the punishment chart and its function when conveying plea offers and sentence options to victims and their families. An ASR sentence, and the potential of an earlier release, was difficult to explain to them. Additionally, prosecutors reported that the time and value that went into charging an offender with the appropriate offense and considering different dispositional agreements (e.g., sentencing in the mitigated range) made them hesitant to consider ASR at sentencing, which could greatly affect the terms of their plea agreements. Of particular concern to the prosecutors was the exception providing that offenders could be released at their ASR date without completing any of the programs if the failure to complete was through no fault of their own. Prosecutors, understandably, were hesitant to agree to such a mitigation of the defendant’s sentence without any guarantee that the mitigation would be earned through participation in rehabilitative programming.

Many prosecutors reported that it was unclear to them how the tool could be used in their plea practice; defense
attorneys echoed the sentiment. The statute is silent as to who is the target population for ASR. Although the statute dictates the eligible population, that definition does little to help direct practitioners or the judiciary to a particular type of offender who might benefit from this program. The population eligible for ASR includes a wide range of eligible offenses (person, property, drug; serious and less serious; violent and non-violent) and criminal histories. Further, there are no criteria in statute or the ASR policies that inform the type of offender needs that would be best served by the programming offered and that warrant the order for priority enrollment.

Without some discernable criteria, ASR is at odds with another principle of Structured Sentencing—consistency. ASR creates the potential for similarly situated offenders to serve very different sentences. Independent of ASR, offenders have the opportunity to earn credit through the Department of Public Safety’s (“the Department”) policies, which award time off their sentence for program participation and inmate work. Earned credit accrues as an offender works or participates in the program; the longer his sentence, the more time he has to accrue credit. In contrast, ASR release dates are not dependent on the length of the sentence, but on the completion of the prescribed programming. For example, the Class H, PRL II offender with a 6 to 17 month sentence serves a minimum of 6 months if he is able to earn credit through the Departmental policies. If that same offender were ordered an ASR release date, he could be released after 4 months if he completes programming or is unable to through no fault of his own. This contrast is greater as the sentence lengths increase. It could be that prosecutors are not inclined to support what could be viewed as a disparate result without some rational basis or reason informing why one defendant deserves the reduction and another does not.

C. Potential Future Impact
The ambiguity of ASR coupled with the prosecutor’s veto provision are likely preventing the tool from being used frequently. This limited usage hinders its ability to have noticeable impact on the stated goals of the JRA and/or sentencing in general. Some of the practical issues, such as lack of a target population of offenders who would benefit from the program, are starting to be addressed, which could increase its usage. The Department has launched a Pre-Sentence Investigation Pilot (PSI). The PSI is used to compile information on offenders and help courts make informed decisions regarding the sentences they may order. The Department has identified these PSIs as a way to identify offenders with needs that might be well served by the programming offered in prisons, and to help judges (and prosecutors) make informed decisions regarding ASR. Even if PSIs are incorporated into sentencing for this purpose, the Department may need to further identify why these offenders deserve the priority of program enrollment, and the corresponding greater sentence reduction, more so than their non-ASR inmate counterparts who participate in the same programming.

However, even if the target population for the program is well defined, how ASR could better fit into existing plea practices would still need to be considered. Currently, defense attorneys are not asking for ASR because of prosecutors’ objections, but also because it does not appear to be the best offer for their clients even if prosecutors agreed. For example, if prosecutors agree to ASR, they may not offer mitigated sentences on top of the reduced minimums available through completion of the ASR program. Defense attorneys reported their client would prefer to have the certainty of an agreement for a mitigated sentence, as opposed to the uncertainty of potentially being released at a reduced minimum sentence if they were able to complete the ASR program successfully.

Aside from ASR, another avenue exists to incentivize program participation—the Department’s Earned Credit Policy. All offenders have the opportunity to earn credit off their maximum sentences, down to their minimum. North Carolina law provides that the Department can set the rate at which it awards credit; the Department has made adjustments to the rate as recently as 2009. The Department could consider additional adjustments to the existing credit policy to further incentivize program participation, if desired.

Even if the practical issues with ASR were resolved, such improvements will not address some of the fundamental objections prosecutors have with ASR. Depending on the number of prosecutors that object to ASR on principle, ASR may continue to play a limited role in the sentencing scheme.

III. Post-Release Supervision
PRS was expanded under the JRA to apply to all offenders following their exit from prison. It differs from the provisions discussed previously because it is not a charging or sentencing option, but rather a mandatory part of the sentence. The expansion of PRS to lower-level felons necessitated a change in the sentencing structure that has raised some interesting observations and questions, particularly as it applies to this new population.

A. Overview and Purpose of Post-Release Supervision
Prior to the JRA, only Class B1–E felons were released from prison onto supervision; Class F–I felons were released without any supervision. As part of its analysis, CSG observed that the low-level felon population was known for higher recidivism rates and recommended that all offenders who committed felony offenses exit prison onto PRS. The JRA provided that, other than for sex offenses, Class F–I felons would serve a 9-month period of PRS, and Class B1–E felons’ period of supervision would be increased from 9 months to 12 months.

If the offender fails on PRS, he can be sent back to prison for a period of incarceration; this period of incarceration is built into the maximum sentence. As such, the maximum sentences for all felony offenses were increased by the number of months the offender would serve if his PRS was ultimately revoked (the “revocation period”).
which is the same number of months the offender is under supervision following release (the “supervision period”).

For example, prior to the expansion of PRS under the JRA, a Class H, PRL II felon could be ordered to a minimum of 6 and a maximum of 8 months; under the JRA, that same sentence is now ordered as a minimum of 6 and a maximum of 17 months. If the defendant is ordered to an active sentence, he serves an initial active component (his “incarceration period”) and is due for release when he is within 9 months of his maximum to serve his period of PRS. In this example, the defendant would be due for release onto PRS when he is within 9 months of his maximum of 17 months, or after 8 months.

CSG’s stated purpose of the expansion of PRS was to provide supervision to all felons upon their exit from prison, with the goal that supervision would improve their success upon reentry. With a higher chance of success in the community, there could be a corresponding reduction in these offenders’ returns to prison, which would draw less on prison and future community corrections resources.

B. The Impact of the Expansion of Post-Release Supervision

As expected, expanding PRS to low-level felons substantially increased the number of offenders under supervision in the community. The expansion of PRS went into effect for offenders sentenced on or after December 1, 2011. At the end of 2011, there were 2,649 offenders on PRS. By the end of 2015, there were 11,387 offenders on PRS—a roughly 330 percent increase in the PRS population since the enactment of the JRA. This increase is driven entirely by the addition of PRS to Class F–I felons.

With a larger population under supervision, there are more offenders that can be in violation of their supervision. Due to the new maximums under the JRA, offenders under the JRA also face longer sentences if they are found in violation of their supervision than their pre-JRA counterparts did. For violations of PRS, offenders can be ordered to return to prison for periods of active time, up to their maximum. In CY2015, 3,947 offenders returned to prison for a violation of their PRS, up from 1,555 in CY2013.

1. Impact of PRS on Low-Level Felons

Beyond the increased population on PRS and number of violations, some interesting observations have arisen as a result of adding a period of PRS to the Class F–I felon population. As mentioned above, PRS has a period of supervision and a period of revocation. For lower-level felons, both of these periods are nine months. Having the same supervision and revocation periods for all offense classes and prior record levels conflicts with the proportional approach to sentence lengths embodied in Structured Sentencing. Although this conflict with proportionality predates the JRA (as the revocation and supervision periods were the same for non-sex offenders convicted in Classes B1–E), the addition of the equal period for Class F–I felons has affected the lowest-level offenders the greatest, due to their shorter sentences. The flat increase by nine months for the low-level felons had a disproportional impact, affecting those with the least serious offenses and the shortest criminal history the most.

Using the example above, a felon who serves a total of 17 months—8 on his initial sentence and 9 on his revocation period—is serving as much as 113 percent more time than he would have served pre-JRA.

Additionally, for a portion of this new PRS population, the nine-month supervision period is longer than their incarceration period. The example defendant ordered to a 6–17 month active sentence serves at most 8 months, and is then released onto PRS for 9 months of supervision. Even though this offender was ordered to an active sentence, he serves more time in the community under supervision than he did incarcerated. This contrast is even more stark for those with shorter sentences (e.g., Class I felons). If these low-level felons later have their PRS revoked, the nine months they would serve incarcerated upon revocation could be more than the time they served on their active sentence. This is the case in the example above, where the defendant served at most 8 months on his active sentence and would serve 9 months upon revocation, more than doubling his sentence.

2. Impact of PRS on Probationers

Another group of low-level felons affected by the changes to PRS under the JRA include those already under supervision in the community—those on probation who commit violations and have probation revoked (“probation revocees”). Probation revocees who have their supervision revoked and their sentence activated are also released onto PRS. The period of PRS in many ways functions the same as the period of probation supervision, since offenders are not supervised differently based on what brought them onto supervision. Further, probation laws in North Carolina, particularly with adjustments made under the JRA, offer multiple chances to complete supervision successfully, with numerous available interventions, including the possibility of additional confinement. Probation revocees are getting two bites at the community supervision “apple,” despite having previously failed on supervision.

Low-level probation revocees likely serve a short amount of time in prison prior to their exit onto PRS. If an offender has his probation revoked, due to changes in responses to probation violations under the JRA, it is likely he has served some time already along the way. This applicable credit, combined with the relatively short sentences of the lower-level felons, means the offender may not be serving much time at all on his revocation period before exiting onto PRS. The shorter the sentence, the more likely it is that a defendant’s credit will push him nearer to his release date, and the defendant will exit prison soon after his entry. This limits the purposes an incarceration period can serve, including creating an opportunity for a more successful supervision period upon release from prison. The possibility of the “in-and-out” offender may have been an unforeseen and unintended consequence of how PRS and the responses to probation violations under the JRA interact.
It is unclear if some of the scenarios described above were contemplated when CSG recommended expanding PRS to all felons exiting prison. Unlike the previous sentencing tools discussed, the mandatory nature of PRS means any structural issues in its design will continue to affect the time offenders serve in prison on PRS revocation(s) and in the community, and may affect available resources (discussed below).

C. Potential Impact of PRS on Criminal Justice System Resources

It is too early to evaluate the effect of PRS; enough time must elapse for eligible offenders to be sentenced, serve their active sentence, and be released and supervised on PRS. Although data show, at this point, an increasing number of offenders under PRS, what remains to be seen is how the increase in the PRS population affects offender behavior and resources. If PRS does not have the effect on behavior as originally sought (i.e., reduced recidivism), it is possible that the resource use for this population may necessitate evaluating which groups should be prioritized for supervision. In addition to the number of offenders on PRS, it will be important to monitor the revocation rate for the PRS population as well as the time served for this population.

As more time elapses, empirical data will be available to determine if there are any differences in outcomes for certain groups of offenders on PRS (e.g., Class B–E felons, Class F–I felons, probation revocates). This would allow greater insight into the effectiveness of PRS and inform any possible changes to target certain offenders. To the extent that any modifications are needed to prioritize limited resources, revisions should be considered within the context of Structured Sentencing. Adopting a more proportional approach to the structure of PRS or removing specific groups from those receiving mandatory PRS would offer a more rational approach in terms of proportionality and, in turn, a way to balance policy with available resources.

IV. Conclusion

One of the JRA’s ultimate goals was to reduce the prison population, both through provisions that could realize an immediate reduction in the population and those that would yield long-term savings. The legislation has thus far been successful in decreasing North Carolina’s prison population, in part due to the legal limitations on when probationers can be returned to prison for violations. However, the heart of the reform lies in the focus on the rehabilitation of offenders in the community. The JRA hopes to effectuate long-term reductions in the prison population by reducing recidivism through rehabilitative programming. However, more time must pass before an evaluation of the JRA as it relates to recidivism can be conducted.

Although the JRA brought about sweeping changes to the criminal justice system in North Carolina, it cannot truly be considered sentencing reform, given the relatively few provisions it contained that affected sentencing. This could be because of the broad sentencing reform that took place in the 1990s, which made extensive changes to North Carolina’s sentencing structure to achieve some similar goals intended by the JRA. It would be difficult to find additional substantial changes that could be made to the sentencing structure to effectuate the results sought without potentially compromising the priorities embodied within the principles of Structured Sentencing. As such, the four sentencing-related provisions in the JRA discussed in this article did not make substantial changes to the sentencing structure, but were probably not created with the intent of reducing the prison population. However, it is important to examine these provisions, as they have varying degrees of conflict with the principles of Structured Sentencing, which could affect their usage and how the system accounts for them over time.

Despite the conflicts with North Carolina’s sentencing structure, these policies are currently supported by correctional resources, avoiding capacity issues that could prompt further analysis in search of potential modifications. It is possible that changes in existing practices might necessitate that the various provisions discussed in this article be reexamined if system resources become an issue. Even if changes are not required to address resource needs, revising the tools to better incorporate the principles of Structured Sentencing (to the extent it is possible) may lead to increased use. Increased use could help the policies and provisions achieve their intended purposes. Ultimately, any revisions of these sentencing provisions that are consistent with the principles of Structured Sentencing will help ensure North Carolina’s sentencing policies continue to foster a consistent, stable, and predictable system in the state.

Notes

1 Views expressed in this paper are those of the author, and are not meant to represent the views of the Commission.


5 Non-active punishments in North Carolina are classified as community and intermediate probationary sentences, with varying conditions as authorized by statute. For more information, see N.C.G.S. § 15A-1343.

For the majority of the past decade, the accuracy of the North Carolina Sentencing Commission’s prison population projections has been within 2%. The Commission’s prison projections are available at http://www.nccourts.org/Courts/CRS/Councils/spac/Publication/Projections/Adult.asp.


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Id. at 9.

See generally NCSPAC, supra note 11.

Council of State Governments, supra note 1, at 16.


For a list of offenses defined as “breaking and entering,” see N.C.G.S. § 14-7.25.

As some of the offenses defined as “breaking and entering” have a higher punishment class than the habitual breaking and entering status offense, it is assumed that they are included in the definition for the purposes of qualifying prior convictions.

NCSPAC, supra note 16, at 32.

Id.

NCSPAC, supra note 15, at 9.

See generally NCSPAC, supra note 16; NCSPAC, Structured Sentencing Statistical Report For Felonies and Misdemeanors, Fiscal Year 2013/14.

NCSPAC, supra note 16, App. D, Tbl. 1, at 73.

N.C.G.S. § 15A-1340.18.


Council of State Governments, supra note 1, at 17.


Id. Not all of the 36,902 inmates were eligible for ASR, only defendants in qualifying cells.

NCSPAC, supra note 15, at 19.

North Carolina does not, as a matter of course, conduct pre-sentence investigations for court-bound offenders.


See Council of State Governments, supra note 1, at 15.

Felons with sex offenses serve a mandatory five-year period of post-release supervision. See N.C.G.S. § 15A-1368(a)(5).


NCSPAC, supra note 32, at 40.

Id.

Although some of the PRS population is still subject to law prior to the enactment of the JRA, that number continues to decrease as time passes. In this figure, 68% were JRA offenders. Id. at 41.