This chapter summarizes legislation enacted by the 1998 General Assembly affecting the sentencing of criminal defendants, the state Department of Correction, state prisons, adult probation and parole, and jails.

**Sentencing**

**Life Imprisonment without Parole**

Section 17.16 of S.L. 1998-212 (S 1366), which is effective January 1, 1999, and applies to offenses committed on or after that date, adds a new statute, G.S. 15A-1340.16B, to provide that a person convicted of a Class B1 felony (such as first-degree rape or first-degree sexual offense) must receive a sentence of life imprisonment without parole if (1) the person has a prior conviction of a Class B1 felony; (2) the victim was age thirteen or younger at the time of the offense; and (3) the court finds no mitigating factors under G.S. 15A-1340.16(e). If the court finds mitigating factors, it must sentence the person in accordance with the usual Structured Sentencing Act (SSA) provisions (G.S. 15A-1340.17).

Section 19.14(q) of S.L. 1998-212 repeals G.S. Chapter 15A, Article 85B (G.S. 15A-1380.5) effective December 1, 1998, for offenses committed on or after that date. The repealed statute, which still applies to offenses committed before December 1, 1998, authorizes a resident superior court judge in the county in which an offender received a sentence of life without parole to review the offender’s sentence after he or she has served twenty-five years in prison, and again every two years thereafter. The judge may review the offender’s record in prison, the degree of risk he or she poses to society, the offender’s health, and the position of members of the victim’s immediate family. After completing the review, the judge has no authority to change the sentence but must recommend to the Governor whether or not the sentence should be altered or commuted. The repeal of this statute of course does not affect the power of the Governor, under Article III, Section 5(6), of the N.C. Constitution, to grant pardons and commutations of sentences.
Capital Punishment

Section 17.22 of S.L. 1998-212 (S 1366) amends G.S. 15-187 and 15-188 to abolish execution by lethal gas and to establish as the only form of execution the injection of a lethal quantity of a barbiturate in combination with a chemical paralytic agent.

Victim Impact Information in Sentencing

G.S. 15A-825(9) requires prosecutors and law enforcement agencies to make a reasonable effort to assure that every crime victim “has a victim impact statement prepared for consideration by the court.” While this law does not specifically say so, “victim impact” is understood to refer to the injury and loss caused by the crime, and “consideration by the court” is understood to refer to sentencing.

North Carolina’s new Crime Victims Rights Act, enacted by Section 19.4 of S.L. 1998-212, goes considerably further. The new law, which is discussed in more detail in Chapter 7 (Criminal Law and Procedure), implements the 1996 Victims Rights Amendment to the N.C. Constitution. New G.S. 15A-833, which became effective December 1, 1998, and applies to offenses committed on or after that date, gives the victim “the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant.” This evidence may include the victim’s physical or psychological injury and economic or property loss. Also, the victim may submit a request for restitution and may indicate whether he or she has applied for or received compensation under the Crime Victims Compensation Act (G.S. Chapter 15B).

The Sentencing Commission and Its Recidivism Studies

History of the Sentencing Commission. The General Assembly created the Sentencing and Policy Advisory Commission in 1990 to study sentencing and related matters and report its recommendations. The commission’s first tasks were to develop and recommend sentencing structures (that is, legislative 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 set penalty limits or ranges for criminal offenses. The result of this initial work was draft legislation that, after considerable modification by the General Assembly, became the SSA, effective in 1994.

Although the commission’s primary task of drafting new sentencing laws has been completed, it still plays an important role in the North Carolina criminal justice system. For example, G.S. 164-43(d) requires the commission to continue 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.

This simulation model is intended to forecast several years into the future the effects on the correctional population (the number of persons under correctional supervision or in custody) of proposed changes in sentencing laws, or related events. The commission itself uses this model, and it must also make the model available for use by legislators and the Secretary of the N.C. Department of Correction. Forecasting the cost and the capacity implications of legislative proposals has proved to be an important tool for the General Assembly, often causing it to think about the future costs of various proposals to increase punishment. The forecasting model was used during the 1994 and 1995 legislative sessions to estimate the effect on the correctional system of a variety of measures under consideration.

The commission has other continuing functions as well. For example, under G.S. 164-42.2 it must develop and recommend a “comprehensive community corrections strategy and organizational structure for the State.” (“Community corrections” refers to programs other than imprisonment, such as probation, community service, and restitution.) In recommending this comprehensive strategy, the commission must consider existing community-based correctional programs, new types of community
programs that may be needed, categories of offenders that would be eligible for such programs, forms of state government oversight and funding, and

analysis of the rate of recidivism of clients under the supervision of the existing community-based corrections programs in the State, recidivism here measured as the clients committing new crimes at any time subsequent to their entry into a community-based corrections program.

Recidivism and the Effectiveness of Correctional Programs. The commission and its consultants (including the Institute of Government), in response to legislative mandates, have carried out four studies of the recidivism (repeated crime) of criminal offenders.1 In these studies, which all used approximately the same methods, recidivism was measured in terms of fingerprinted rearrest for alleged new crimes during a follow-up period (which, in the most recent study, averaged thirty-five months). The studies described and compared the recidivism rates of offenders by the type of programs to which they were assigned (for example, community service, electronic house arrest, and restitution). None of these studies, as their authors emphasized, was intended as an evaluation of the effect on recidivism of any of the programs. Measuring the recidivism rate of persons involved in a particular program, of course, does not show whether their recidivism would have been different without the program. Legislation in 1998 redirects study efforts toward program evaluation.

Section 16.18 of S.L. 1998-212 (S 1366) repeals previous legislation [1996 N.C. Sess. Laws Ch. 18 (Second Ex. Sess.), Sec. 22.3] that had required the annual reporting of recidivism rates. Instead, it calls on the Sentencing Commission and the state Department of Correction (DOC) jointly to conduct “evaluations of community corrections programs and in-prison treatment programs” and to report these biennially to the General Assembly. The reports must include “composite measures of program effectiveness based on recidivism rates, other outcome measures, and costs of the programs.” The commission must create an expanded database with information on each offender’s “prior convictions, current conviction and sentence, program participation, and outcome measures.” Each program to be evaluated must assist the commission with the data collection. The first report must be made by April 15, 2000, to the chairs of the Senate and House Appropriations Committees and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. Future reports are due by April 15 of even-numbered years. The Judicial Department may use $50,000 in 1998–99 appropriated funds for the study.

Prisons

Converting Former Small Prisons to Other Uses

In 1931, during the Great Depression, the state took over responsibility for county roads as well as the county prison farms whose prisoners did much of the road construction at that time. The result was an unusually large number of small minimum custody state prison units in North Carolina, housing

many inmates that in other states would be serving their time in local jails. As of 1992, North Carolina had 91 prison units with capacities less than 110 inmates, much more than any other state (the average state had 24.5 such units).

The Governmental Performance Audit Committee (GPAC) recommended in 1993 that the state close thirty of its smaller prison units because of their high operating costs per inmate. Section 19.4 of S.L. 1998-212 (S 1366) amends S.L. 1997-443, which allowed small units closed as a result of the GPAC recommendations to be used for other purposes by counties, cities, or private firms. The amendment allows the DOC to consult with private firms about possibly converting such units to other uses and also requires DOC to consult with elected state and local officials about the conversion.

**Private Prisons**

New G.S. 14-256.1, enacted by Section 17.23 of S.L. 1998-212 (S 1366), makes it a Class H felony for a person convicted in a jurisdiction other than North Carolina but housed in a private correctional facility in North Carolina to escape from that facility. S.L. 1998-212 also requires DOC to consult with the Department of Justice on the appropriateness of the penalty established by new G.S. 14-256.1 for escape from a private correctional facility and “on the implications of convicting inmates already serving sentences imposed by other jurisdictions in private prisons located in North Carolina.” DOC must report its findings by March 15, 1999, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

In 1997, the General Assembly enacted S.L. 1997-443, Section 19.17, to forbid local governments and private entities in North Carolina to build, own, or operate correctional facilities for the confinement of inmates from any jurisdiction other than North Carolina or a political subdivision (county or municipality) of North Carolina until DOC develops proposed standards for such facilities. Section 17.23 of S.L. 1998-212 amends this measure to exclude facilities operated by the federal government, as well as those operated by North Carolina and its subdivisions, from the standards requirement. The 1998 measure extends DOC’s deadline to March 15, 1999, to report on its proposed standards to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety. DOC’s report must include, in addition to the proposed standards, a recommendation regarding (1) which regulatory agency should enforce the standards and (2) what authority that agency should have, as well as a draft of implementing legislation.

**Work Release**

Section 17.25 of S.L. 1998-212 (S 1366) requires DOC to establish a pilot program for determining the benefits of specialized prison units housing inmates on work release. This pilot program will be implemented in the Alamance and Union Correctional Centers by placing as many eligible inmates as possible on work release, with the exception of Union Correctional Center inmates needed on Department of Transportation road squads. DOC must report on the cost-effectiveness of this pilot program by March 1, 1999, to the chairs of the House and Senate Appropriations Committees and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

**DART/DWI Program; Inmate Tracking and Program Evaluation**

Post-arrest testing programs nationwide have shown that a large proportion of persons charged with serious crimes were using illegal drugs at the time. In 1997, according to the National Institute of Justice, the percentage of adult male arrestees testing positive for illegal drugs such as cocaine, marijuana, and opiates ranged from 51.4 to 80.3 percent in twenty-three major cities. This example illustrates why treatment for drug abuse is considered a major component of any correctional system.

DOC’s drug abuse treatment program, known as DART/DWI (Drug/Alcohol Recovery Treatment / Driving While Impaired), consists of prison-based programs and private bed facilities. The prison-based programs serve inmates at the beginning of their sentences. The inmates receive
approximately thirty-five days of residential treatment followed by eight weeks of aftercare and then participate in Alcoholics Anonymous or Narcotics Anonymous meetings. The private programs last from three to twelve months and treat minimum security inmates at the end of their sentences. In 1996, more than 7,700 inmates were admitted to these programs.

Section 17.12 of S.L. 1998-212 (S 1366) provides that $467,806 of unspent funds that S.L. 1997-443 appropriated to DOC for 1997–98 for DART/DWI aftercare at Cherry Hospital do not revert to the General Fund but remain available to DOC as the legislation specifies. DOC may use $319,715 for the DART/DWI aftercare program. Also, DOC may use $125,000 for contractual services for the substance abuse program to identify the information that should be collected to track offenders and evaluate the program, and to train staff to use the tracking and evaluation system. The legislation places another $100,000 in a reserve to purchase hardware and software for offender tracking and program evaluation. DOC must report by December 15, 1998, to the chairs of the Senate and House Appropriations Committees and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety concerning its progress in finding consultants to develop a plan for an offender-tracking and program evaluation system. The reserve funds may not be spent until DOC has submitted a plan for the system to these committees. If the plan is not submitted by March 15, 1999, the General Assembly will allocate the funds.

Section 17.12 of S.L. 1998-212 also requires DOC to report annually by March 1 to these same committees on its efforts to provide effective treatment to offenders with substance abuse problems. The report must include, among other things, information on the number of current inmates with substance abuse problems, the number receiving treatment, and the number who have completed treatment. As the offender-tracking system becomes available, the report must also include information on the recidivism of former inmates who complete substance abuse treatment while in prison.

Probation, Parole, and Post-Release Supervision

Probation is a status imposed as a sentence in which a criminal offender is subject to a term of imprisonment that is suspended on conditions set by the sentencing court. Parole (under the law preceding the Structured Sentencing Act) and supervised release (under the SSA) are forms of release from prison, subject to conditions set by the Post-Release Supervision and Parole Commission. An offender’s status of being on probation, parole, or supervised release may be revoked, and the offender sent to prison, if the offender commits either new crimes or “technical” (noncriminal) violations of conditions, such as payment of restitution or participation in a rehabilitative program. Probationers and parolees are supervised by officers of the Division of Adult Probation and Parole (DAPP) of DOC. In 1996–97, according to DOC, 58,460 offenders began serving probation sentences and 106,492 were on probation at the end of the year (including some whose probation began in earlier years). The number on parole has been declining since the SSA abolished parole, from a peak of 20,879 in 1994–95 to 10,617 by June 1997. (Many offenders still in prison whose crimes occurred before October 1, 1994, when the SSA went into effect remain eligible for consideration for parole. Also, offenders sentenced for impaired driving, not covered by the SSA, remain eligible for parole.)

Performance Audit of Probation and Parole

Section 17.16 of S.L. 1998-212 (S 1366) requires DAPP to report by January 1, 1999, on actions taken or planned in response to the June 1998 report by the State Auditor. The report must be made to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the General Assembly’s Fiscal Research Division.

The auditor’s report was made pursuant to legislation (S.L. 1997-443, sec. 19.13) that called for a performance audit of DAPP addressing its structure, staffing patterns, workload, personnel practices, and general effectiveness. The full text of the report is available on the State Auditor’s Internet home page, http://www.osa.state.nc.us. The following are some highlights of the audit of DAPP.
• Overall, the auditor’s report concluded that DAPP’s programs compared favorably with other states’ programs and noted that DAPP has the reputation of being an innovator.
• About 37 percent of probationers and parolees are rearrested and charged with a new crime within an average follow-up period of thirty-five months. This finding was based on research by the Sentencing and Policy Advisory Commission, which followed probationers and parolees placed on probation or parole in 1993–94 and 1994–95.
• Revocation rates of both probationers and parolees, measured as the proportion of all persons whose probation or parole is revoked to the total number of persons whose probation or parole is ending each year, have been dropping. For example, the revocation rate for probationers was 42.0 percent in 1991–92 and declined to 22.0 percent in 1994–95. This was good news even though the rate rose slightly (to 24.7 percent) in 1996–97. The auditor’s report interprets the decline of revocation as a sign that DAPP is working more effectively with offenders.
• Probation and parole officers’ caseload, overall, was ninety offenders per officer in 1996. This caseload puts North Carolina at the average level (ninety-one offenders per officer) among thirty-one states and the federal correctional system, which, like North Carolina, combine the supervision of probationers and parolees in one agency. However, the auditor’s report found that caseloads vary widely among districts, with some individual caseloads as high as 165.
• DAPP has successfully decentralized its operations, according to the auditor’s report. As a result of the SSA, effective in 1994, and subsequent legislation, the total number of staff positions in DAPP went from about 1,800 in 1993–94 to about 2,700 in 1997–98. Legislation also required DAPP to reorganize by creating offices for each of the state’s forty-three judicial districts and four judicial divisions (formerly, the division had twelve branch offices statewide).
• While decentralization of purchasing, personnel, and training functions has made DAPP more efficient, the report notes some problems resulting from decentralization, including insufficient office space, spans of control that may be too large for chief probation/parole officers, and manual preparation of case files that could be done more efficiently using computers.
• Some staff vacancies in DAPP are not being filled on a timely basis, meaning that the remaining staff have had to take on additional work. For example, of 701 vacancies in 1996–97, 57 percent were open for more than ninety days. One possible explanation, according to the report, is that it is sometimes difficult to hire employees at current salary levels.

The IMPACT (Boot Camp) Program

The Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) program, also known as “boot camp,” involves military-style discipline and training for sentenced criminal offenders, usually for a period of ninety days. The number of admissions to IMPACT has risen steadily from 380 in 1992 to 770 in 1997. While the program was initially limited to men, a facility for women (sixty beds) was scheduled to open in spring of 1998. There also is an IMPACT Aftercare program that serves probationers after they complete the boot camp course. Aftercare currently operates on a pilot basis on four sites and focuses on substance abuse problems of offenders.

IMPACT has involved offenders on special probation, a form of probation in which one of the conditions of a longer suspended term of imprisonment is that the offender be confined for a short time in a prison or jail. In the past, DOC has operated IMPACT in prison facilities while probationers were serving a period of special probation confinement.

Effective December 1, 1998, Section 17.21 of S.L. 1998-212 (S 1366) changed IMPACT to make it a program administered by DAPP, with the boot camp portion housed in facilities operated by DAPP rather than the Division of Prisons. Section 17.21 of S.L. 1998-212 also amends G.S. 15A-1343(b1), 15A-1343.1, 15A-1344(e), and 15A-1351(a) to make IMPACT a residential treatment program as
defined by the SSA. G.S. 15A-1340.11(8). Although IMPACT will no longer be a part of special probation, it will continue to be a condition of probation and will continue to qualify, under G.S. 15A-1340.11(6)b, as an intermediate punishment for purposes of the SSA. The eligibility criteria for IMPACT remain unchanged: The offender must be sixteen to thirty years of age; must be convicted of a felony or a Class 1 or A1 misdemeanor; and must pass a medical examination.

Now that IMPACT has become a residential treatment program rather than special probation, it is unclear whether time spent in it will continue to count toward an activated term of imprisonment if an offender’s probation is revoked. The N.C. Supreme Court held, in *State v. Farris*, 336 N.C. 552, 444 S.E.2d 182 (1993), that time spent in confinement as a condition of special probation must be credited toward the activated term.

Section 17.1 of S.L. 1998-212 (S 1366) requires DOC to evaluate IMPACT as well as the Post-Boot Camp Program and report annually by March 1 to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections and Crime Control Oversight Committee, and the Fiscal Research Division. The evaluation must include any available information on the difference in outcome among offenders who attend IMPACT only; those who attend IMPACT and receive Post-Boot Camp aftercare; and similar offenders who receive other intermediate sanctions.

It is worth noting that in the most recent recidivism study by the Sentencing Commission, 46.4 percent of 740 persons placed in IMPACT during 1994–95 were rearrested for an alleged new crime during a follow-up period averaging thirty-five months, compared to 38.5 percent for all 1,916 persons sentenced to special probation and 31.3 percent for 27,241 persons sentenced to regular probation. Two possible explanations of the higher recidivism rate are that (1) IMPACT participants are younger (average age of nineteen) than other special probationers and regular probationers (average age of twenty-nine), and criminal activity tends to peak in the late teens; and (2) they are selected for IMPACT precisely because they have a higher degree of crime involvement than other probationers. (The commission’s most recent recidivism study indicated that about 46 percent of IMPACT participants could be classified as high risk, in terms of criminal history, current offense, age, and other factors that predict recidivism, while only about 31 percent of regular probationers in the study were classified as high risk.)

**Post-Release Supervision and Parole Commission**

S.L. 1998-212 (S 1366), Section 17.13, requires the Post-Release Supervision and Parole Commission to report by March 1, 1999, to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and, upon request, to the chairs of the Joint Legislative Corrections and Crime Control Oversight Committee after March 1, 1999. The report must cover the commission’s progress in reviewing cases under *Robbins v. Freeman*, 127 N.C. App. 162, 487 S.E.2d 771 (1997), in which the N.C. Court of Appeals held invalid the practice of “paper parole.” “Paper parole” was a practice involving certain prisoners with multiple consecutive prison sentences in which the commission would “parole” the prisoner from one sentence without actually releasing him from prison to begin serving his next sentence. The court of appeals, whose decision was affirmed by the supreme court, held that the commission must follow G.S. 15A-1354(b), which requires that multiple consecutive sentences be added together and treated as a single sentence for purposes of parole. This decision means that the commission has had to recompute the time that some prisoners must serve before becoming eligible for parole.

The report required by Section 17.13 of the 1998 Appropriations Act also must contain an updated plan for reducing the commission’s staff through the 2002–03 fiscal year, including a 10 percent reduction in staff positions in 1999–2000 compared to 1998–99. The staff reduction is thought appropriate because the SSA abolished parole in 1994 and the number of prisoners still eligible for parole under former law has been dwindling. This decline in parole workload will be offset to some extent by the growing number of prisoners eligible for supervised release under the SSA. It will be offset as well by the increase in the prison population during the last few years. Because of the rapid increase in prison capacity that occurred as a result of the legislation accompanying structured sentencing, the average daily prison population has grown, from an average of 20,986 in 1993, the last full year before the SSA took effect, to 32,060 in 1997.
Other Correctional Programs

Community Justice Partnership Program

The Community Justice Partnership Program was created in 1994 to provide state assistance to local planning groups to plan and operate more of the community correctional programs that qualify as intermediate punishments under the SSA. In the beginning, the program offered both discretionary grants and block (formula) grants to counties, pursuant to G.S. 143B-273.15. In 1997, the funding system was changed to block grants only. S.L. 1998-212 (S 1366), Section 17.5, continues that arrangement, amending S.L. 1997-443, Section 19.8, so that available funds may be distributed only as block grants during the remainder of the 1997–99 biennium.

Community Service

Community service, also called “reparation” in some statutes, is work performed by offenders, without pay, pursuant to a court order as a condition of probation or deferred prosecution, or by the Post-Release Supervision and Parole Commission as a condition of supervised release or parole. The recipients of community service ordinarily are public agencies or nonprofit organizations that provide public services. Officers in the Department of Crime Control and Public Safety, known as community service coordinators, find work assignments for offenders, monitor their performance of the work, and report violations of the requirements to the sentencing court or probation or parole officers.

Section 34 of S.L. 1998-217 (S 1279) addresses the problem that a few offenders refuse to perform their community service—a problem worsened if they fail to appear in court to answer to the violation and cannot be found by officers. This legislation adds subsection (f) to G.S. 143B-475.1 to provide that the community service staff “shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service.” If the community service staff find such a violation, they must notify the offender obligated to perform the service by mail or personal delivery of a hearing regarding the violation, at least ten days before any hearing, and state the basis of the alleged violation. The court that ordered the service must conduct the hearing even if the offender fails to appear. The purpose of the hearing is to determine whether there was a willful failure to perform the service. If the court so finds, it must revoke the offender’s driver’s license and notify the Division of Motor Vehicles to revoke the license until the community service has been performed. Also, the court may take any action authorized for violation of probation.

Restitution

Restitution is payment by a defendant to a victim of the crime to compensate for the injury or loss caused by the crime. Restitution may be imposed as a part of a sentence for criminal conviction, usually as a condition of probation. Under certain circumstances, it also may be a condition of parole or supervised release from prison. The 1998 session saw some important changes in restitution as part of the legislation giving effect to the Victims’ Rights Amendment, Article I, Section 37 of the N.C. Constitution, approved by the state’s voters in 1996. [Other provisions of the Crime Victims’ Rights Act are discussed in Chapter 7 (Criminal Law and Procedure).]

Section 19.4(d) of S.L. 1998-212 (S 1366) enacted a new Article 81C of G.S. Ch. 15A as part of the legislation implementing the Victims’ Rights Amendment to the N.C. Constitution. The new law is effective December 1, 1998, and applies to offenses that occur on or after that date.

New G.S. 15A-1340.24 provides that a judge, in sentencing a convicted defendant, must determine whether the defendant should be ordered to pay restitution to the crime victim. (In previous law [for example, G.S. 15A-1343(d)], judges were allowed to order restitution but not required to consider it.) Furthermore, if the offense is one of the serious offenses in new Article 45A [G.S. 15A-830(a)(7)], new G.S. 15A-1340.24(b) provides that “the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” In other
words, for these offenses, the judge must order restitution. (The Article 45A offenses include all felonies in Classes A through E, certain other felonies, and certain misdemeanors, such as assaults and stalking, in which the victim and the defendant have a personal relationship, such as marriage, cohabitation, or parent and child.) The restitution must be a condition of probation if the defendant is sentenced to probation, and must be a condition of supervised release from prison if the defendant receives supervised release.

With regard to the requirement that the sentencing judge order restitution for Article 45A offenses, new G.S. 15A-1340.24(b) says that restitution must be ordered “in addition to any penalty authorized by law....” This apparently means that restitution must be ordered for these offenses even if the court does not sentence the defendant to probation. This is an important change from current practice, in which restitution usually is a condition of probation. The apparent intent is to require an order of restitution even if the defendant is sentenced to active imprisonment and is ineligible for supervised release under the SSA (G.S. 15A-1368.1 limits eligibility to those who have received active imprisonment for Class B1 through E felonies).

Determining the amount of restitution, under new G.S. 15A-1340.25 and 15A-1340.26, is quite similar to the former procedure of G.S. 15A-1343(d), but some provisions are more specific. The determination must include various types of medical and psychological treatment if the victim was injured, income lost by the victim as a result of the offense, and return of property lost or damaged or payment of its value. If the offense results in the victim’s death, the amount must include funeral costs. Under new G.S. 15A-830(b), if the victim is deceased, his or her next of kin is entitled to the restitution. As under previous law, new G.S. 15A-1340.26 requires the court to take into consideration the resources of the defendant in determining the amount to be ordered and allows the court to order partial restitution if it finds that the defendant is unable to pay for all of the loss. The court may either require the defendant to make full restitution no later than a certain date or require payment in installments over a specified period. The judge, as under prior law, must consider whether to recommend that the restitution be paid (1) from work-release earnings if the defendant receives work release while in prison, and (2) from earnings or other sources if the defendant receives parole or supervised release.

New G.S. 15A-1340.27 continues some other provisions formerly in G.S. 15A-1340(d): A restitution order does not abridge the right of the victim or victim’s estate to bring a civil action against the defendant for damages resulting from the crime. Any amount paid pursuant to the restitution order is to be credited against the defendant’s civil liability. The court may order the defendant to make restitution to a person other than the victim, or to an organization (including the Crime Victims’ Compensation Fund under G.S. Ch. 15B), if the person or organization provides assistance to the victim after the crime “and is subrogated to the rights of the victim.” However, restitution must be made to the victim or his or her estate before it is made to any other person or organization. Restitution may not be ordered to a government agency, except for damage or loss over and above its normal operating costs; however, the state may receive restitution for the costs of an appointed defense attorney pursuant to G.S. 7A-455(b). A third party, such as an insurance company, may not benefit because of restitution payments to the crime victim, and the fact that the victim is insured does not limit the court’s power to order restitution.

Under certain circumstances, if the defendant is ordered to pay more than $250 in restitution, the order may be enforced like a civil judgment. New G.S. 15A-1340.28(a) qualifies this provision by making it applicable only to “an order for restitution under G.S. 15A-1340.24(b).” Presumably the intent is to apply civil enforcement procedure only to those serious offenses, mentioned earlier, that are covered by new Article 45A of G.S. Chapter 15A. G.S. 15A-1340.28(b) provides that an order for restitution for such an offense must be docketed and indexed as a civil judgment as provided by G.S. 1-233 and 1-234, and may be collected as any other civil judgment. The subsection also provides that “[t]he judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation.” If the restitution is a condition of probation, the docketed judgment may not be executed on the defendant’s property unless the judge notifies the clerk of court that the defendant’s probation is terminated or revoked and restitution remains unpaid. The clerk must then docket the unpaid amount and notify the victim by mail that the judgment may be executed. One exception to this procedure occurs if the defendant, while still on probation, transfers property to
another person. Such transferred property, under G.S. 15A-1340.28(c), is not subject to the stay of execution that applies to the defendant’s property during probation. In other words, the clerk may issue a writ of execution against the transferred property without awaiting termination or revocation of the probation.

If the restitution is not a condition of probation (for example, if it accompanies an active sentence), it is subject to collection as a civil judgment. However, under G.S. 15A-1340.26(b), the date when the civil debt is collectable presumably would depend on the payment date or payment schedule set by the sentencing judge.

The provisions regarding civil docketing of restitution orders apparently supersede the procedures of present G.S. 1-15.1 with regard to the serious offenses covered by Article 45A of G.S. Chapter 15A. G.S. 1-15.1 concerns a civil action for damages filed by a crime victim against the offender. It tolls the statute of limitations for the action from the time the restitution order is entered until it is paid in full. It also provides that at the civil trial, the defendant may contest the amount of the damages, and the amount of the restitution order is not admissible in evidence. This statute presumably continues to apply to offenses not covered by the victims’ rights legislation.

The legislation makes other important changes regarding execution of a restitution order as a civil judgment. It amends G.S. 1-234 to make clear that a restitution judgment docketed under new G.S. 15A-1340.28 constitutes a lien against the defendant’s property. Furthermore, it alters G.S. 1C-1601(e) to remove the G.S. Chapter 1C, Article 16 exemptions of property from execution of a criminal restitution order under G.S. 15A-1340.28. G.S. 1C-1601 exempts from creditor’s claims portions of the value of certain property—for example, the debtor’s residence, motor vehicle, professional tools, and personal household furnishings. These kinds of property will now be subject to execution of a restitution judgment.

Section 19.4(d) of S.L. 1998-212 also amends G.S. 7A-304(d) to change the priorities for distribution of funds paid to the clerk of court for fines, court costs, and restitution. Restitution payments to the victim will now have top priority in distribution, ranking ahead of costs to the county or city and fines to the county school fund.

**Crime Victims Compensation**

The Crime Victims Compensation Act, G.S. Chapter 15B, enacted in 1983, created a Crime Victims’ Compensation Commission that, under certain circumstances, may compensate crime victims for economic loss caused by the crime. S.L. 1998-212 (S 1366), Section 19.4(l), effective December 1, 1998, and applicable to injuries on or after that date, amends G.S. 15B-2 to allow compensation to be paid for “household support loss.” Compensation for household support loss is only available if (1) the victim is unemployed; (2) the offender is the victim’s spouse; and (3) the crime qualifies as “criminally injurious conduct.” [Under G.S. 15B-2(5), criminally injurious conduct is conduct that poses a substantial threat of personal injury or death and is punishable by fine, imprisonment, or death.] Also, to obtain this compensation the victim must meet existing requirements of the act (for example, the victim must report the crime to police within seventy-two hours and must not have been engaged in a crime at the time of the injury).

Household support loss means “the loss of support that a victim would have received from the victim’s spouse for the purpose of maintaining a home or residence for the victim and the victim’s dependents.” The apparent intent of this phrase is to compensate the victim when the victim and his or her spouse (the offender) separate as a result of the crime and the offender ceases to provide support to the family. The limit for this type of compensation is $50 per week for each dependent child, up to $300 per week, and is limited to twenty-six weeks commencing with the date of the injury.

Section 19.4(l) of S.L. 1998-212 also deletes G.S. 15B-11(e), which forbade compensation if the economic loss was less than $200. It amends G.S. 15B-2(14) to raise from $200 to $300 per week the amount of compensation that may be paid for work loss, up to twenty-six weeks from the date of the injury; alters G.S. 15B-11 to extend from one to two years the time allowed to the claimant to apply for compensation after the criminally injurious conduct; and adds G.S. 15B-11(c1) to allow the commission to deny a claim if the claimant has been convicted of a felony in Class A through E within three years of the victim’s injury. Finally, the measure amends G.S. 15B-11(g) to raise to $30,000 the
total compensation that can be paid apart from allowable funeral expenses (the previous limit was $20,000).

**Rape Victims’ Assistance**

G.S. Chapter 143B, Article 11, Part 3A, enacted in 1981, establishes a program of assistance for victims of rape and sex offenses. This program covers only victims who have reported the crimes of first- or second-degree rape or first- or second-degree sexual offense to law enforcement authorities within seventy-two hours. (In North Carolina law, first-degree and second-degree sexual offenses are forcible sexual acts other than vaginal intercourse.) G.S. 143B-480.2 authorizes the Secretary of Crime Control and Public Safety to pay expenses incurred by the victim, but only for immediate, short-term medical care and ambulance and mental health services. The money is paid to the health care or service provider.

S.L. 1998-212, Section 19.4(n), effective December 1, 1998, and applicable to injuries on or after that date, raises the amount that may be paid under this program, from $500 to $1,000, and authorizes payment up to $50 to replace victims’ clothing held for evidence tests.

**Jails**

**Use of Jails for Juvenile Detention**

The juvenile justice reform legislation, S.L. 1998-202 (S 1260), which is described in detail Chapter 13 (Juvenile Law), has some implications for jails (confinement facilities operated by local governments). Under new G.S. 147-33.42(2), effective January 1, 1999, the new Office of Juvenile Justice may plan with any county that has space within its county jail system to use the existing space for a juvenile detention home when needed, if the space meets state standards under G.S. 153A-221. Juveniles confined in a jail must be supervised closely, and there must be “sight and sound separation between the juveniles and adult detainees” (i.e., the space must be designed so that juveniles will not be able to converse with, see, or be seen by the adult population). S.L. 1998-202 also amends G.S. 153A-218 to make clear that a juvenile detention facility may be located in the same building as a county jail provided that it meets the requirements of G.S. Chapter 153A, Article 10, Part 2, which include (in G.S. 153A-221.1) the requirement of sight and sound separation.

*S Stevens H. Clarke*