North Carolina
Sentencing and Policy Advisory Commission

Justice Reinvestment Act Implementation Evaluation Report

Project Conducted in Conjunction with the
Division of Adult Correction and Juvenile Justice of the
North Carolina Department of Public Safety

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I. INTRODUCTION

In 2011, the North Carolina General Assembly directed the Sentencing and Policy Advisory Commission (Sentencing Commission) and the Division of Adult Correction and Juvenile Justice (DACJJ) of the Department of Public Safety (DPS) to jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act (JRA).[1] This report constitutes the third report in compliance with the directive.

The first implementation evaluation report addressed the early stages of implementation – primarily, the preparation efforts agencies made in anticipation of the changes under the new law. The second report addressed the revisions agencies made to policies and procedures to account for real-life scenarios faced in implementation. This report includes background on Justice Reinvestment in North Carolina, a summary of the major provisions in the legislation and subsequent changes, recent policy and procedure changes made by agencies, feedback and observations from the field regarding emerging practices obtained through site visits across the state, and available statewide JRA data for CY 2013.

The information in this report comes from updates provided by agencies at meetings of the Justice Reinvestment Implementation Report Subcommittee (*see* below); from agency and organizational reports submitted to the Legislature; from data collected by agencies; and from information captured in field interviews performed by Sentencing Commission staff.

Justice Reinvestment Implementation Report Subcommittee

In response to the mandate to conduct ongoing evaluations of the implementation of the JRA, the Sentencing Commission established the Justice Reinvestment Implementation Report Subcommittee. The purpose of the Subcommittee is to gather information, review data where available, and report to the Commission any recommendations regarding the implementation of the JRA. The Subcommittee met two times after the submission date of the previous report (April 15, 2013): February 21 and March 28, 2014. At the March 28 meeting, the Subcommittee reviewed and accepted the final report.

II. BACKGROUND – JUSTICE REINVESTMENT IN NORTH CAROLINA

In 2009, North Carolina's executive, legislative, and judicial leadership requested technical assistance from the Council of State Governments (CSG) Justice Center to study North Carolina's criminal justice system. The bi-partisan request was made in response to the state's increasing prison population and with the hope the CSG would determine ways North Carolina could curb expenditures for building prisons as well as ways to reinvest in strategies to reduce corrections spending overall.[2]

[1] N.C. Gen. Stat. (hereinafter G.S.) § 164-50.

[2] Due to a confluence of factors, the prison population in North Carolina has declined since 2009. Legislative changes made to the felony punishment chart in 2009, as well as changes to earned time credits made in 2011,

From 2009 to 2010, the CSG analyzed North Carolina data, examined the criminal justice system, and engaged stakeholders and policymakers to identify potential areas for improvement in sentencing, supervision, and treatment practices. The CSG found probation revocations and various sentence enhancements were two factors straining the prison system. The CSG also noted the lack of supervision for many offenders leaving prison, as well as inadequately targeted treatment in the community. The CSG developed and recommended a legislative package designed to increase public safety while curbing spending on corrections by reinvesting in community treatment.[3]

The policy options presented by the CSG were incorporated into House Bill 642, The Justice Reinvestment Act. Representatives Bordsen, Faircloth, Guice, and Parmon introduced HB 642 in the North Carolina General Assembly during the 2011 Session. Both the House of Representatives and Senate ultimately passed the legislation with overwhelming support. Governor Perdue signed the Act into law on June 23, 2011.

Major Provisions of the Justice Reinvestment Act

The JRA makes changes to North Carolina's court system and corrections system (encompassing prisons, probation, and post-release supervision). The Act also creates a statewide confinement program for misdemeanants, refocuses community resources, creates a new habitual breaking and entering felony offense, and modifies the punishment for habitual felons. A summary of the major provisions of the Act is provided below, by system.[4] (*See* Appendix C for a full list of acronyms used in this report.)

Changes to the Court System

The JRA expands the existing drug diversion program[5] to make it mandatory. All first-time offenders convicted of a misdemeanor or Class I felony possession of drugs or paraphernalia offense are placed in the program. However, the General Assembly subsequently amended the statute to allow a judge to find that an offender is inappropriate for the program[6] (*see* Related Legislation).

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contributed to the decline. North Carolina has also experienced changes in demographic trends (including a decrease in the rate of growth in the state's population, particularly for males ages 16-24), and decreases in crime trends overall. (For a full report on North Carolina's prison population, *see* NC Sentencing and Policy Advisory Commission, *Prison Population Projections FY 2014-FY 2023*). This phenomenon is not unique to North Carolina; at least half of states in the U.S. reported a decline in prison populations in 2012 (*see* U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2012*).

[3] For the full report from the Council of State Governments, *see* Council of State Governments Justice Center, *Justice Reinvestment in North Carolina, Analysis and Policy Framework to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety*, April 2011.

[4] Additional information on the JRA is available in multiple places. *See* NC Sentencing and Policy Advisory Commission, *Justice Reinvestment Implementation Evaluation Report,* April 2012 and April 2013*; The North Carolina Justice Reinvestment Act* by James Markham, UNC SOG, published December 7, 2012; and http://www.sog.unc.edu/node/2044.

[5] G.S. 90-96.

[6] Session Law 2013-210.

An habitual breaking and entering status offense is created; offenders who commit their second felony breaking and entering offense are sentenced in Class E according to the felony punishment chart.[7]

The existing habitual felon law is modified under the JRA; habitual felons are sentenced four classes higher than the class of the current offense, but no higher than Class C.[8]

The JRA redefines Community and Intermediate punishments.[9] Community punishment is defined as any sentence other than an Active punishment, drug treatment court, or special probation (split sentence). Intermediate punishment is defined as supervised probation. It may include any other condition of probation. Drug treatment court and special probation (split sentence) are limited to Intermediate punishment sentences. The court has the discretion to impose supervised probation with no additional conditions as an Intermediate punishment. The JRA creates short periods of confinement ("quick dips") in jail as a new condition of probation.[10] The court is authorized to impose up to six days per month in jail. This condition can be imposed as part of a Community or Intermediate punishment.

Advanced Supervised Release (ASR) is created under the JRA for certain offenders receiving active sentences.[11] ASR allows judges to decide at sentencing whether eligible offenders will be ordered to this prison program which, if completed, leads to their release at a reduced minimum sentence.

Changes to Probation

The JRA codifies the use of risk and need assessments as a strategy in managing offenders and allocating resources in the community and directs the DACJJ to perform an assessment on all offenders.[12] Supervision and other resources are targeted based on offenders' levels of risk and need.

The Act expands delegated authority for probation officers. They are authorized to impose most of the current conditions of probation and to respond to violations by imposing quick dips. The officer may impose a quick dip without a court hearing if the offender signs a waiver.[13]

Under the JRA, prison time imposed for technical violations of probation is limited. The penalty for a first or second technical violation of probation is set at 90 days imprisonment for a felon and up to 90 days for a misdemeanant.[14]

[7] G.S. 14-7.31.
[8] G.S. 14-7.6.
[9] G.S. 15A-1340.11(2), (6).
[10] G.S. 15A-1343 (a1)(3).
[11] G.S. 15A-1340.18.
[12] G.S. 15A-1343.2(b1).
[13] G.S. 15A-1343.2(e) and (f).
[14] G.S. 15A-1344(d2).

Changes to Prisons

See Advanced Supervised Release above – "Changes to Court System."

Changes to Post-Release Supervision

Post-Release Supervision (PRS) under the JRA is expanded to include all felons. A period of nine months of supervision is required for Class F through I felons and five years of supervision is required for Class F through I felons convicted of a sex offense. The revocation period for these offenders is nine months. Twelve months of PRS is required for Class B1 through E felons; the revocation period is twelve months.[15]

Similar to probation, prison time imposed for technical violations on PRS is limited. The penalty for a first, second, or third technical violation is set at 90 days of imprisonment. Upon the fourth technical violation, the Post-Release Supervision and Parole (PRSP) Commission may revoke PRS and impose the rest of the prison sentence.[16]

Resources

The Criminal Justice Partnership Program (CJPP) is repealed under the Act and the Treatment for Effective Community Supervision (TECS) Program is created.[17] The DACJJ is authorized to enter into contractual agreements with eligible entities for the operation of community-based corrections programs. TECS focuses on certain offenders: (1) offenders convicted of a felony; (2) offenders participating in the felony drug diversion program; and (3) offenders who are identified by the DACJJ to have a high likelihood of re-offending and who have a moderate to high need for substance abuse treatment. Programs eligible for funding include substance abuse treatment programs, cognitive-behavioral programming, and other evidence-based programming.

Under the JRA, the Statewide Misdemeanant Confinement Program (SMCP) is created.[18] Most misdemeanants will be housed in local jails instead of state prisons. The North Carolina Sheriffs' Association (NCSA) operates the SMCP; it is funded by the Statewide Misdemeanant Confinement (SMC) Fund. Misdemeanants who receive a sentence of between 91 and 180 days of confinement are placed under the Program. The SMCP finds space to house those misdemeanants in participating local jails. If the participating local jails are full, the DACJJ houses the offenders. (The SMCP does not apply to offenders convicted of impaired driving offenses.)

Effective Dates

The JRA went into effect in 2011 and early 2012 (*see* Table 1). Tracking the effective dates and events that determine offender eligibility is critical to proper application of the law.

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[15] G.S. 15A-1368.1 to -1368.2.
[16] G.S. 15A-1368.3(c).
[17] G.S. 143B-1150 to -1160.
[18] G.S. 148-32.1(b2) to (b4).

Table 1: JRA Effective Dates by Provision

Date	Application	Provision
July 1, 2011	N/A	TECS Program SMC Fund
December 1, 2011	Probation violations occurring on or after:	CRV
	Offenses committed on or after:	Habitual B&E Habitual Felon Redefine C and I conditions Expand delegated authority Expand PRS
January 1, 2012	Pleas or guilty findings on or after:	Drug diversion ASR
	Sentences imposed on or after:	SMC Program

The varied effective dates of the JRA created difficulties for agencies with regard to implementation. There is not a simple distinction between "old" and "new" law; practitioners must be aware of when each provision went into effect in order to determine which offenders are eligible for certain offenses, conditions, and punishments. The General Assembly has also amended the JRA (*see* below, "Related Legislation"), creating additional effective dates for new and amended JRA provisions which also must be tracked to ensure proper application of the law. (*See* Appendix B for a full timeline of the JRA implementation.)

Having multiple effective dates also created some inconsistencies: for example, an offender who committed a Class F through H offense prior to December 1, 2011, but who is not found guilty until after January 1, 2012, could be eligible for the ASR program even though he/she would not be subject to PRS. As more time passes under the new law, however, these inconsistencies will phase out (*i.e.,* fewer cases will have offense dates prior to December 1, 2011).

Related Legislation

The Legislature passed the JRA in June 2011 and made clarifying changes in September 2011 before the Act went into effect. S.L. 2011-412 clarified probation officers' delegated authority for Community and Intermediate punishments. Confinement periods imposed through delegated authority must run concurrently and may total no more than six days per month for offenders on probation for multiple judgments. The legislation also clarified how time spent in confinement awaiting a hearing for a probation violation is credited towards Confinement in Response to Violation (CRV) periods, and specified that CRV periods must run concurrently for offenders on probation for multiple offenses.

In June 2012, the Legislature made additional clarifications to the JRA (*see* Table 2). S.L. 2012-188 clarified that offenders sentenced to Community or Intermediate punishments and ordered to perform community service shall pay a community service fee. This provision became effective

July 16, 2012, and applies to any community service conditions ordered as part of a Community or Intermediate punishment on or after that date. The legislation amended the requirements for probation officers exercising delegated authority to allow two probation officers to witness a probationer's waiver of rights (previously one probation officer and his/her supervisor had to witness the waiver). It also clarified that judges can impose a CRV period of less than 90 days for misdemeanants (effective July 16, 2012). The legislation provides that the period of PRS is tolled during confinement for offenders re-imprisoned for violating conditions of PRS. This provision became effective on July 16, 2012, and applies to supervisees violating conditions of PRS on or after that date. S.L. 2012-188 amended the maximum sentences for drug trafficking convictions to allow for twelve months of PRS for drug trafficking convictions in Classes B1 through E and nine months of PRS for drug trafficking convictions in Classes F through I. These maximum sentence lengths are effective for offenses committed on or after December 1, 2012. Lastly, S.L. 2012-188 granted the PRSP Commission expanded authority to conduct hearings using videoconferencing, effective December 1, 2012.

In June 2013, the Legislature made additional clarifications to the JRA. S.L. 2013-101 amended the regular conditions of probation to make it clear that the requirement to not abscond applies to offenders on supervised probation only. It also amended the CRV statute to make it clear that the confinement period must consist of consecutive days (*i.e.*, they cannot be separated). The legislation repealed the requirement that the Sentencing and Policy Advisory Commission report biannually on recidivism rates for offenders on probation, parole, and post-release supervision participating in programming funded by the TECS program. These changes became effective June 12, 2013. The legislation also amended three maximum sentences specified for Class B1 through E felonies that were incorrectly calculated in the original JRA bill. These maximum sentences are effective for offenses committed on or after October 1, 2013.

At the same time, the General Assembly changed one of the policies in the original JRA. S.L. 2013-210 allows the court to determine, with a written finding and agreement of the District Attorney, that an offender is inappropriate for conditional discharge under G.S. 90-96 for factors related to the offense. JRA originally made this provision mandatory for certain offenders. This change applies to offenses committed on or after December 1, 2013.

Table 2: JRA Amendment Effective Dates by Provision

Date	Application	Provision
July 16, 2012	PRS violations occurring on or after:	PRS period tolled during re-imprisonment
	CRVs imposed on or after:	CRVs less than 90 days authorized for misdemeanants
December 1, 2012	Offenses committed on or after:	Drug trafficking maximum sentences increased
October 1, 2013	Offenses committed on or after:	Certain Class B1-E maximum sentences increased
December 1, 2013	Offenses committed on or after:	Drug diversion change

III. AGENCY UPDATES

Since the publication of the previous report, agencies have continued to refine and reassess their practices related to the ongoing implementation of the JRA. Information included in this section is by agency and highlights recent efforts, where relevant, primarily occurring in CY 2013 (with some anticipated plans for CY 2014 also reported). As expected, agencies made few changes to policies and procedures, given that the bulk of implementation – policy and procedure development (and revisions where necessary), refinements to data management systems and data collection practices, and training – has either already occurred or has been subsumed into agencies' everyday work. However, some modifications and improvements to increase program, policy, and/or data management efficacy or to manage resources were reported at this stage.

Administrative Office of the Courts

Data Collection

As noted in previous reports, the Administrative Office of the Courts (AOC) plans to gradually replace its statewide automated case processing system (the Automated Criminal Infraction System or ACIS) with a new case processing system, the Criminal Case Information System (CCIS). Planned changes for CCIS related to the JRA include:

- Judge's findings for habitual felons and offenders convicted of habitual breaking and entering;
- Deletion of repealed Intermediate punishment sanctions (Intensive Supervision, Day Reporting Center, waiver of community service and related fees);
- Collection of information for Community and Intermediate punishments (Special Probation, Electronic House Arrest, Community Service);
- Conditional discharge disposition;
- SMCP and custody location;
- ASR term;
- CRV indicator; and
- Quick dip information (location, date to be served, duration).

Initially, AOC reported plans to pilot CCIS changes in November 2013; the agency now plans to pilot the changes in one county in May 2014. Depending on the experience of the pilot county, the CCIS changes will then be expanded to additional counties with the statewide rollout continuing into 2015.

No automated data reflecting the information listed above will be available for any cases with offense dates on or after December 1, 2011, and prior to its inclusion in CCIS. Without adequate data, it will be difficult to determine the impact of the JRA on the court system and difficult to assess how sentencing practices change as a result of the JRA.

Department of Public Safety

Treatment for Effective Community Supervision

The Treatment for Effective Community Supervision program is designed to target high-risk and/or high need offenders (supervised at Level 1 or Level 2 and who have a substance abuse flag) with Cognitive Behavioral Intervention (CBI) services, substance abuse treatment, and/or referral to community-based services and resources. There were a few reported changes to TECS in CY 2013, mainly related to the request for proposals (RFP) process and contracts for services across the state, funding, and recidivism reduction planning.

As of February 21, 2014, DPS reported that 32 vendors have been awarded contracts in 88 counties. The Department is in the process of sending letters to those 32 vendors inquiring if they wish to exercise their one-year renewal option. In March 2014, DPS will issue a RFP for services for the 12 counties currently not being served by TECS programs. At that same time, DPS will also issue a RFP for any counties where vendors do not exercise their renewal option; contracts awarded under this RFP will be for one year. In December 2014, the Department will begin the RFP process for services in all 100 counties, to begin July 2015. This will put all vendors serving all 100 counties on the same schedule.

The Department reported that it encountered several challenges in trying to obtain intensive outpatient services for substance abuse treatment and, therefore, had opted to give vendors the choice to either continue intensive outpatient services or discontinue those services. Any funds that are not spent as a result of vendors opting to discontinue intensive outpatient services will be reallocated for CBI services.

The General Assembly appropriated two million dollars for FY 2013-14 and FY 2014-15 to the Department for substance abuse services (Broaden Access to Community Treatment program).[19] In FY 2013-14, the Department reported using this funding to supplement TECS vendor contracts to increase substance abuse services. In FY 2014-15, the Department will issue a separate RFP for substance abuse services.

As part of TECS, the JRA required the DPS Section of Community Supervision ("Community Supervision") to publish a recidivism reduction plan. This plan would articulate a goal of reducing revocations among people on probation and PRS by 20% from the rate in FY 2009-10; identify the number of people on probation and PRS in each county that are in the priority population and have a likely need for substance abuse and/or mental health treatment, employment, education, and/or housing; identify the program models that research has shown to be effective at reducing recidivism for the target population and rank those programs based on their cost-effectiveness; and propose a plan to fund the provision of the most cost-effective programs and services across the State.[20] DPS reported that it had achieved its mandated goal; the revocation rate was 37% in 2009 and 21% in 2013 for a reduction in revocations of

[19] *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for FY 2013-14 as enacted in S.L. 2013-360, Appropriations Act of 2013 (Senate Bill 402).
[20] G.S. 143B-1155(b).

approximately 43%. DPS added that the draft recidivism reduction plan will be completed by April 2014.

Confinement in Response to Violation

CRVs were designed as an option to address offender non-compliance on probation. For technical violations of probation, the offender is removed from the community and the Department attempts to address the offender's behavior through intensive programming provided while in custody. DPS reported that very limited programming is currently available for CRV offenders in prisons or jails; however, the Department continues to study availability and access to programming.

To address the programmatic needs of the CRV population, DPS explored the possibility of designating a single facility for adult male felons with CRVs. The Department designed a pilot program that creates a designated CRV center (a "Residential Adult Behavior Modification Center"). The planned center will be located within a prison facility (Johnston Correctional Institute) and will share the prison infrastructure; however, the CRV population will be housed separately from the regular prison population. CRV offenders will be supervised under a Contingency Management Model, using incentives and sanctions to change behavior. The center will be staffed by a reduced number of custody staff; program staff in the center will require a higher classification level. Probation officers will also be present on site, to bridge the gap back into the community after offenders complete their CRV period.

During the confinement period at the Residential Adult Behavior Modification Center, offenders will participate in mandatory programming, including CBI programs, substance abuse interventions, guidance counseling, life skills seminars and workshops, and on-site work. The mandatory programming requires daily, full-day participation, seven days a week. The Department intends to launch the pilot program in 2014.

Data Collection

DPS's Management Information Systems (MIS) Section has continued to refine DACJJ's data management system, the Offender Population Unified System or OPUS, to ensure the accurate accounting of information related to the JRA. MIS developed an enhanced Risk Need Assessment (RNA) and case planning section, which includes sanctions imposed and program participation and outcomes. MIS has developed and is piloting a process to document administrative responses, based on using incentives and consequences. The MIS Section is also developing a code to track situations where probation is terminated following a CRV in order to distinguish it from situations where a terminal CRV is ordered. Probation rosters contained in OPUS have also been modified to show officers upcoming CRV releases.

The Department tracks community program data in its Program Information Management System (PIMS). In CY 2013, the Department modified the existing database to the new PIMS, which allows the Department to track community program data and allows vendors to submit invoices using the system.

Resources

The caseload goal for probation officers mandated by the Legislature under the JRA is 60 probationers to 1 officer.[21] In the 2012 and 2013 Sessions, the General Assembly authorized the Secretary of Public Safety to reclassify existing vacant positions within the Department to create new probation and parole officer and judicial service coordinator positions in order to meet the increasing caseloads resulting from the implementation of the JRA.[22] DPS reported 50 positions were transferred from the Section of Adult and Juvenile Facilities ("Adult and Juvenile Facilities") to Community Supervision; all transferred positions have been filled. Additionally, DACJJ reallocated 197 Surveillance Officer positions to probation officer positions. In the 2013 Session, the General Assembly appropriated funds for 75 additional positions in FY 2013-14 and 100 additional positions in FY 2014-15.[23] The Department reported being in the process of hiring for the 75 positions, which will give Community Supervision a total of 1,777 probation officer positions.

DPS reported moving away from its current model of caseload management, which combines high-, medium-, and low-risk offenders on one caseload. The new template for managing offenders will separate probationers by risk level, with officers either supervising higher-risk offenders at a lower offender-to-officer ratio or supervising lower-risk offenders at a higher ratio. DPS is giving probation officers a choice between having a caseload of sixty or less high- and medium-risk offenders who they manage in the field and having a caseload of 120 or more low-risk offenders where they monitor compliance with the conditions of supervision. Most officers have been able to get the type of caseload they requested. The transition to the new caseload management template was scheduled to be completed by March 31, 2014, and will enable DACJJ to meet the caseload goals mandated by the JRA.

In anticipation of the increasing number of offenders coming out of prison onto PRS, DPS reported revising its policy regarding direct release of offenders. Local probation staff will be able to assist in the release of offenders from prison and oversee their return to the supervising county. This change is expected to alleviate supervising officer resources previously needed to transport offenders from prison back into the community.

Post-Release Supervision and Parole Commission

Resources

The PRSP Commission sets the conditions of PRS for those offenders eligible for supervision and has the authority to revoke PRS for offenders who violate the conditions placed upon them at the time of release. Because PRS follows release from prison, and offenders must first serve active sentences, the full effect of the expansion of PRS to include all felons has not been realized at this point.

[21] G.S.15A-1343.2(c).
[22] S.L. 2012-142, Section 14.2A(a); S.L. 2013-360, Section 16C.13(a).
[23] *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for FY 2013-14 as enacted in S.L. 2013-360, Appropriations Act of 2013 (SB 402).

In the 2012 Session, the General Assembly authorized the Secretary of Public Safety to reclassify existing vacant positions within the Department to create new parole case analyst positions in order to meet the increasing caseloads resulting from the implementation of the JRA.[24] The Department did not reclassify any positions to create new parole case analyst positions.

In the 2013 Session, the General Assembly appropriated funding for eight additional case analyst positions.[25] The PRSP Commission reclassified the existing case analyst positions into three levels and is in the process of filling the eight additional positions. It is unclear at this point if the amount of resources available are adequate, given the number of felons being released from prison onto PRS continues to increase.

Statewide Misdemeanant Confinement Program

Certain misdemeanants (those sentenced to 91 to 180 days of confinement) are housed in county jails as part of the SMCP. The NCSA runs the SMCP. The program is funded by the SMC Fund; the revenue for this fund comes through a dedicated fee the Legislature established under the JRA.[26] The SMCP has been fully operational since it went into effect on January 1, 2012.[27]

The JRA does not require counties to receive inmates as part of the program; participation is entirely voluntary. All counties, however, participate as sending counties. If a receiving county experiences a period of high volume and cannot handle additional inmates sentenced to the SMCP, the county may put its participation on hold without withdrawing from the program completely. Available space within county jails volunteered to the program can be filled by inmates across the state; however, the program generally tries to house inmates in their own or neighboring jurisdictions. As of December 31, 2013, the NCSA reported 53 counties had signed housing agreements for a total bed space capacity of 1,655.

CRV offenders who would have served their active sentences in local jails under the SMCP will serve any CRV periods in local jails under the SMCP as well. Expenses for supervising, housing, and transporting CRV inmates are reimbursed from the SMC Fund. The projection of the number of CRV inmates that will be confined in local jails as part of the SMCP is unknown, as there are not yet enough available data on the utilization of this response to probation violations.

Programming (*e.g.*, substance abuse treatment, CBI programming) for offenders housed pursuant to the SMCP is not available; generally, programming is not required in local jails. However, the NCSA reported examining, in coordination with DPS, what programming it might be able to offer for SMCP inmates, particularly for misdemeanants serving CRVs pursuant to the Program.

[24] S.L. 2012-142, Section 14.2A(a).
[25] *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for FY 2013-14 as enacted in S.L. 2013-360, Appropriations Act of 2013 (SB 402).
[26] G.S. 7A-304(a)(2b), (4b).
[27] *See* North Carolina Sheriffs' Association *Statewide Misdemeanant Confinement Program Annual Report,* January 1-December 31, 2012.

Resources

The SMCP is funded through the SMC Fund. The NCSA reported that it ended CY 2012 with a balance of $14.7 million and collected $25 million in CY 2013. In that same calendar year, the Fund dispersed about $10.5 million. In 2013, the General Assembly transferred $13.5 million from the Fund to the DPS and $1 million to the North Carolina Sheriffs' Education and Training Standards Commission.[28] The impact of this transfer on the Fund's ability to meet expenses is unknown at this point.

As noted in previous reports, the impact of quick-dips and CRVs on jail capacity and the SMCP remains unclear at this point. These subgroups may have an impact on local confinement facilities' availability of bed space and county participation in the program. Because North Carolina lacks a single, statewide automated data system for jails, the examination of the use of JRA tools that affect jail capacity and that could affect the SMCP is not possible at this point.

IV. OBSERVATIONS FROM SITE VISITS

Overview

This section contains information obtained from site visit interviews, a project conducted during the fall of 2013, and details the purpose, methodology, protocol, and results of the interviews.

Background

The Sentencing Commission is required by statute to submit the JRA Implementation Evaluation Report, annually, to the state legislature. In the current stage of the implementation of the JRA, provisions of the legislation have been fully implemented, but available empirical data are insufficient yet to offer a representative picture of sentencing and correctional practices under the new law.

Generally, it is important in evaluating the impact of any legislation, to understand not only the intent of the law, but its application. Field practitioners have been using the provisions of the JRA since 2011, and their perspective offered at this stage provides context, through an insight into emerging practices, to interpret the empirical information.

Information obtained from interviews with practitioners has enriched not only the current JRA Implementation Evaluation Report, but other legislatively-mandated Commission reports including the 2014 Correctional Program Evaluation Report, the 2014 Structured Sentencing Statistical Report for Felonies and Misdemeanors, and the Prison Population Projections for FY 2014 – FY 2023.

[28] *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for FY 2012-13 as enacted in S.L. 2012-142, Modify 2011 Appropriations Act (HB 950).

Methodology

Designing the site visit project involved three stages: (1) the selection of practitioner groups to interview; (2) the selection of sites to visit; and (3) the development of the interview protocol.

The goal in the selection of practitioner groups to interview was to get an assortment of viewpoints on the current implementation of the JRA. As the JRA made changes to sentencing laws and correctional practices, the perspectives of both court professionals and Community Supervision personnel were key. Court professionals interviewed included District and Superior Court judges, District Attorneys, and Public Defenders. Community Supervision personnel interviewed included Chief Probation and Parole Officers (CPPOs or "chiefs") and Probation and Parole Officers (PPOs or "officers").

While not representative of all 100 North Carolina counties, the sample sites of districts selected were feasible to visit in the project timeframe and included maximum variety. The following factors were considered in the site selection stage:

- Judicial Division
- Judicial District
- Probation Division
- Region (West, Piedmont, East)
- Population Density (Urban or Rural)
- Presence of a Public Defender Office

As noted above, staff wanted to capture both the prosecution and defense perspectives and, therefore, limited the initial selection to only those counties with a public defender office. From the remaining districts with a public defender office, six counties were chosen: two Western counties (one urban, one rural), two Piedmont counties (one urban, one rural), and two Eastern counties (one urban, one rural).

Following the site selection, the interview protocol for the site visits was developed. The questions for practitioners were designed to help gain an understanding of current practices in the field and, more specifically, if, how, and to what extent the provisions of the JRA have affected those practices. Staff started from the law itself and translated the provisions into a process, which was designed to follow a typical case. The core set of process-based questions was then tailored to fit the practitioner roles based on the relevance to each practitioner group's work. (*See* Appendix A for the complete interview protocol.) For the probation office protocol, feedback was solicited and incorporated from Community Supervision.

Protocol

A total of 69 interviews were completed in September and October of 2013. The number of practitioners interviewed in each county varied based on population density, with more interviewees scheduled in urban districts and fewer in the rural districts. Additionally, some districts had more practitioners available; therefore the distribution among practitioner roles was not necessarily equal among districts. The interviews included thirteen judges, sixteen district attorneys, twenty public defenders, six chief probation and parole officers, and fourteen probation and parole officers.

After the interviews were completed, the information was compiled by district and analyzed by practitioner role and by topic. In analyzing the information, a consensus approach was used in determining common themes. Only repeated perspectives were included in the analysis, while extremes were eliminated.

Results

After analyzing the interviews, fifteen broad topics emerged, with interconnected perspectives from both courts and probation. The information is presented below, generally following the criminal justice process – the pre-sentencing, sentencing, and post-sentencing stages.

Pre-Sentencing - Charges and Plea Negotiations

The wide sweep of the JRA impacted the entire span of the criminal justice system and included legal provisions, altered correctional practices, and shifts in authority and discretion. In this environment of change, new practices can be expected to emerge at all stages of the criminal justice process, not only to incorporate the new directives, but also to anticipate and respond to the expected actions of other players. Pre-sentencing decisions are driven by the prosecution and defense, and take into account the existing court culture related to charging decisions, the structure and focus of pleas (charge bargaining versus sentence bargaining), judges' acceptance of plea agreements, and anticipated outcomes at further stages in the criminal justice process (*e.g.,* sentencing and post-sentencing decisions).

Two specific JRA topics with special bearing on the pre-sentencing process – habitual felon law changes and Community/Intermediate punishment changes – served as a focal point in the field interviews with attorneys and will be reported in this section.

Habitual Status Offenses and the Charging/Plea Negotiation Process

The life cycle of any case in the criminal justice system begins with decisions made by prosecutors at the charging stage. When asked about the effect the JRA had on charges prosecutors brought, most attorneys responded there was no effect. However, when specifically asked about two changes under the JRA related to habitual status offenses, prosecutors and defense attorneys acknowledged they did play a role in new charging practices.

One of the two provisions introduced gradation in the penalty structure of the existing habitual felon law; the other created a new habitual breaking and entering felon status in response to serious public safety concerns and complaints by the law enforcement community. Full implementation of these provisions was expected to alter some plea negotiation patterns, deter certain forms of recidivism, and possibly impact prison bed needs.

Generally, prosecutors reported screening on the merits of the case, and not necessarily pursuing habitual felon status or habitual breaking and entering status in every eligible case, or habitualizing on the highest possible charge. Some district attorney offices have already developed office policies regarding the type of habitual status and level of habitual enforcement.

Some offices reported pursuing habitual felon status and/or habitual breaking and entering status for every eligible case, while others left decisions to the discretion of individual prosecutors. At least one office reported routinely pursuing both charges for eligible cases. Habitual charges were not always indicted initially, but were sometimes added as an incentive to plea or offered with a mitigated sentence.

The charging phase under the JRA allows prosecutors to weigh a variety of factors: felony charges, legal applicability of habitual felon status and habitual breaking and entering status, and available charges to habitualize on and their corresponding offense class-punishment ranges. The additional charging options now available to prosecutors had perhaps an even greater impact at the plea negotiation phase.

As with other areas affected by changes under the JRA, the plea negotiation practice looks different than pre-JRA, with new scenarios and tools for court personnel to utilize or to circumvent. In structuring plea agreements, attorneys attempt to anticipate decisions made by other actors later in the process in order to craft their desired outcome in a particular case. Changes or even the perception of changes in sentencing and post-sentencing practices were reported as considerations during plea negotiations.

The habitual felon law changes and the addition of the habitual breaking and entering status offense offer powerful plea bargaining tools. The factors surrounding the habitual status offenses frame the subsequent plea negotiations for both defense and prosecution, with added plea flexibility provided in a case where both habitual felon and habitual breaking and entering charges are applicable.

New plea bargain patterns emerged involving habitualizing on a lower offense class in a multi-charge case (*e.g.*, Class I, which sends the offender to an Class E sanction, avoiding the Class D "bump" in punishment); habitualizing instead on habitual breaking and entering (sentenced in Class E); recommending a mitigated sentence, a consolidated sentence, or, in the rare occasion, probation. These options seemed to offer greater flexibility to structure negotiations that meet the goal of prosecutors to get a habitual status offense conviction when they feel a case warrants it, while still meeting the goal of the defense attorneys to limit, to the extent possible, their clients' exposure to active time.

It was unclear whether negotiation practices still include the previous high rate of pleading to habitual felon status with a mitigated sentence. At least one district attorney's office indicated they no longer offer the mitigated range when pleading habitual felon convictions because they feel the new law already gives the right penalty for the crime. Other prosecutors and defense attorneys indicated that offers in the mitigated range were still routinely used in Classes C, D and E. Prosecutors' opinions varied on whether they agree to non-active sentences for habitual breaking and entering; however, most indicated they would not consider probation for habitual felons.

The habitual felon law changes were almost uniformly viewed by court professionals as among the more helpful provisions of the JRA. Most found the new provision clearly defined and welcomed the increased fairness of the graduated habitual felon sanctions. District attorneys and

defense attorneys agreed that the JRA made habitual felon penalties more proportional with the underlying offense. Prosecutors were more comfortable with an habitual felon charge under the new law, allowing for more appropriate sentences (*e.g.* Class D or E) for cases that would not be appropriate for the previous Class C sentence. District attorneys also noted that with the more proportional habitual felon penalties, plea bargains and more habitual felon convictions might be possible. As some assessed, standing alone, habitual breaking and entering could work the same as habitual felon in getting more plea bargains and convictions; used in tandem the two options worked as an even more potent bargaining tool. Defense attorneys had little to say about habitual breaking and entering, but noted that it was being pursued by prosecutors.

The gradation introduced by the JRA in the habitual felon law was welcomed by both defense and prosecution; the value of both the new habitual provisions will be measured in the long run by a number of outcomes, including their effect on the prison population, the recidivism rate of released habitual offenders, and deterrence measured in rates of certain crimes such as breaking and entering. While statistical information is already available from court records on the frequency of habitual felon and habitual breaking and entering convictions, it will be more challenging to assess empirically their use in plea bargains that successfully avoid a habitual conviction.

Community and Intermediate Punishment Changes and the Charging/Plea Negotiation Process

Other JRA factors, aside from new charging options, were reportedly now at play during plea negotiations. Under the JRA, the distinction between Community and Intermediate punishments was drastically reduced. An Intermediate punishment still requires supervised probation, but all other conditions are optional. Special probation (*i.e.*, a split sentence) and drug treatment court are the only conditions that are limited to Intermediate Punishments; otherwise, a Community punishment and an Intermediate punishment may include the same conditions. The Act eliminated Intensive Supervised Probation (ISP), residential treatment facilities, and day reporting centers. The purpose of the "blurring" of Intermediate and Community punishment was to give more authority and flexibility to probation officers to assess offenders after being sentenced to probation, and to use delegated authority to impose the appropriate conditions to manage offenders' risk and meet their needs.

These changes, expectedly, have had an impact on plea negotiations. Many prosecutors viewed the elimination of ISP as detrimental, weakening the meaning of Intermediate punishment. The increased authority given to probation to impose punishment conditions post-sentencing had caused a shift on front-end decision-making, but it is unclear if this perception of Intermediate punishment made prosecutors any less likely to offer probation in a plea negotiation. Some attorneys reported increasing specificity in their plea agreements with regards to the conditions of probation, as an attempt to have greater control over what occurs when offenders are supervised on probation.

On the whole, there was no clear consensus from court professionals on whether the JRA had an overall strengthening or weakening effect on probation. However, if a prosecutor reported a perception that probation lacked "teeth" under the JRA, they were more likely to negotiate away from a probation sentence to an active sentence, if possible. These changes to Community and

Intermediate punishment were taken into account to a certain extent, during the plea negotiation process; however, they had a greater perceived impact at the sentencing phase.

Other JRA Provisions and the Charging/Plea Negotiation Process

Other JRA provisions that reportedly factored into plea negotiations – some unexpectedly so – included the 90-96 drug diversion program, the creation of the ASR sentencing option, CRVs, limits to revocations of probation, the addition of PRS for low level felons, and the increase of the PRS period for more serious felons.

Under the JRA, the drug diversion program defined in G.S. 90-96 was made mandatory for eligible, consenting defendants. While this law was later amended and thus was not included in the field visit protocol, almost a third of respondents raised the issue themselves, highlighting how widespread of an impact 90-96 changes have in the daily practice for court professionals. Prosecutors reported that the mandatory nature was a negative incentive for defendants to plead because there was no longer a reason to forgo a trial in the case – the end result would be a 90-96 diversion program regardless. Defense attorneys appreciated the mandatory nature, but reported that some of their clients, for a variety of reasons, would refuse to consent to the program and opt for the conviction. Prosecutors also utilized the "refuse to consent" provision to work plea agreements towards a more desirable end – one example being the defendant could have 90-96 on a felony charge or refuse to consent and take a misdemeanor conviction.

The 2012 amendment to this provision (effective for offenses committed on or after December 1, 2013) allows for judges to make a written finding that defendants are inappropriate for the program, with the consent of the district attorney, eliminating again the mandatory aspect of the program. Most parties welcomed the program's return to a discretionary standard.

Changes under the JRA greatly affected the strength of an order of consecutive sentences. Several district attorneys expressed frustration over the fact that CRVs could drastically reduce the impact of a consecutive sentence, due to the way CRV credit is applied to consecutive sentences. Some prosecutors have accounted for this potential result by requiring an active component up front in their plea offers. This change abutted another reported by prosecutors across the districts—hesitance to agree to suspended sentences at all, due to the greatly reduced likelihood of revocation and the knowledge offenders may not face their full sentence upon revocation. Because judges can only revoke probation in certain circumstances, some prosecutors acknowledged taking into account those limits when offering probation.

A less obvious impact of the JRA on plea negotiations was on the option to agree to a straight active sentence. In the past, district attorneys and defense attorneys might have agreed that a shorter active sentence was more appropriate in certain situations over a probationary sentence. With the addition of PRS to low level felons, defense attorneys now must advise their clients that there is no "straight active" sentence anymore and, instead, offenders will be on supervision when they are released from their active sentence. Defense attorneys also reported advising clients that it would not be as easy to "take their time" later because the path to revocation on probation is much longer than pre-JRA. However, many of their clients did not seem to be as affected by this addition as they might have expected. Some district attorneys were able to

sidestep this requirement by offering a misdemeanor in exchange for an active sentence but, as can be expected, this was not appropriate for many charges.

Some areas of practice were unaffected by JRA changes and the additional tools it created. While the JRA impacted the fashioning of pleas, all parties reported that they did not observe a change in the judge's likelihood to accept their plea bargain. The option of the habitual felon gradation, the new habitual breaking and entering, and return to discretionary enrollment in 90-96 were greeted with appreciation; however, some of the other effects (*e.g.*, changes to Community and Intermediate punishment, CRVs, revocations) have taken longer to surface. These changes posed a new challenge, though not an insurmountable one, to arriving at a mutually acceptable plea agreement.

Sentencing

Just as attorneys use available options and tools when structuring plea agreements, judges use available options and tools at the sentencing phase. Two specific JRA provisions and their interaction with the sentencing phase are highlighted in this section: Community and Intermediate punishment changes and Advanced Supervised Release.

Community and Intermediate Punishment Changes and Conditions of Probation

Generally, judges, prosecutors and defense attorneys reported they did not observe much change in sentencing due to the JRA, but when asked specifically about the Community and Intermediate Punishment changes, they offered feedback pointing to some emerging practices and/or perceptions under the new law.

As with prosecutors, some judges lamented the loss of ISP and felt that probation had been weakened by that and by the limits on revocations. However, there was no clear consensus from judges that the changes to Community and Intermediate punishment factored into decisions to impose active sentences at a greater rate. Some judges said they were actually more likely to give probation because they were becoming more comfortable with the probation office and with their new proactive approach to offenders. Similarly, attorneys had various perceptions regarding the likelihood of getting an active sentence. Prosecutors stated that judges were more likely to give an active sentence while defense attorneys believed the opposite.

Parties universally reported that judges were ordering special probation more often, and many linked this practice to the elimination of ISP. Another reason for the increased frequency of split sentences may be due to the fact that they remain one of the only differences between Intermediate and Community punishments under the JRA. The expansion of PRS under the JRA has also impacted special probation; higher maximum sentences reflective of the additional time period for PRS have created longer available periods for split sentences. While splits were reported to be a more frequently imposed condition, it was reported with some variance as to whether judges were taking advantage of the longer available split time.

Judges perceived that their individual practices regarding specifying conditions had not been affected by the JRA. They pointed out that some of the conditions they previously specified have

become regular conditions of probation printed on the judgment forms. They also noted, echoing reports from attorneys, that prosecutors and defense attorneys are specifying conditions in plea agreements – judges indicated a reluctance to upset the agreements. Some of the court professionals pointed out that judges who know that probation officers will add conditions pursuant to the RNA are more willing to trust the officers, while other court professionals saw the imposition of conditions of probation as a judicial function.

Court officials had varied interpretations on judicial practices post-JRA. Many observed that judges are still imposing the sentences they want, just using different combinations of the various conditions available under the new provisions to achieve the desired results; and seem to do so regularly. Some reported that judges are imposing more conditions when sentencing offenders to probation, while others reported the opposite. Empirical data will provide some insight into sentencing practices (*e.g.*, changes in the rates of punishments to active and non-active sentences, specific probation conditions imposed); however, it will be difficult to determine the extent to which any new practices can be attributed to JRA changes.

Advanced Supervised Release

The only expansion of sentencing options given to the courts under the JRA was the addition of ASR. The stated role of ASR, in line with the rehabilitative thread of the JRA, is to combine punishment (incarceration) with individualized programming to improve an offender's chances of success. Judges are to identify candidates appropriate for ASR and, given no objection from the prosecutor, direct Adult and Juvenile Facilities to assess the offender's criminogenic needs and offer the offender services intended to meet those needs. As an incentive, and an alternative to the regular sentence, the judge also imposes a shorter sentence to allow earlier release of offenders successfully satisfying the conditions of ASR. Addressing the JRA's concern with saving correctional resources, ASR is also expected to reduce length of time served for certain offenders, thereby saving prison beds.

Court professionals interviewed at the six sites reported very limited implementation of the ASR option so far, noting that ASR is "not in play," mostly due to District Attorney (DA) office policy.

The consensus among prosecutors seems to be to oppose ASR, which functionally halts its use in plea negotiations or sentencing. Generally, they were either unwilling to consent to ASR, had reservations about the program, or noted that they would consider the request on a case-by-case basis, but had no ready examples of situations where they had considered ASR. In addition to articulated office policy, prosecutors also tended to object to the idea of ASR based on their personal criminal justice related beliefs and practices.

The reasons for the prosecutors' opposition to ASR fell along two lines. Some opposed ASR based on pragmatic grounds, arguing that addressing the charges or sentence length lead to more effective and fair negotiations and results. They focused on their preference to negotiate the sentence during the plea negotiation process, using a variety of tools available (*e.g.*, habitual felon status, habitual breaking and entering status, sliding penalty scale based on the original charges, defendant's acceptance of responsibility). Prosecutors cited that charges and plea offers

were carefully crafted, and that agreeing to ASR after a reduction in charges or a mitigated sentence had already been arranged would throw off the plea negotiations. The "worth of the case" (*i.e.*, the penalty fitting the crime) would be determined at the plea-bargaining phase, and should not be reduced later in prison. Other district attorneys disagreed with the entire purpose and outcome of ASR (early release from prison for eligible offenders). There were also questions about whether programs currently existed in prisons for the ASR population, and the proven efficacy of such programs for rehabilitation and recidivism reduction.

In some ways, the conditioning of the ASR provision upon prosecutorial consent, coupled with the unwillingness of DAs to grant this consent in most cases, was the reason quoted by public defenders and judges for steering clear of the ASR option. Public defenders across the board noted that they had no success with ASR due to prosecutor objections, with some not even bothering to ask the assistant district attorney (ADA) for it during plea negotiations. Most assistant public defenders (APDs) also found the tool unhelpful and stated that if ASR was on the table during negotiations, it usually meant "something else had to go" (such as a mitigated sentence), which was often a worse deal for their clients. Adding to the same line of reasoning, they also pointed to cases where their client did not want an ASR sentence, preferring instead the opportunity to secure a favorable sentence during the plea bargaining phase.

Overall, the court seemed unclear as to the utility of ASR as a tool in pre-sentencing and sentencing decisions. While no judges reported initiating ASR, some expressed interest in ASR as a tool for plea negotiations and for potential prison rehabilitation. However, some judges stated they would only agree to ASR if it was in the plea agreement. A few judges were aware of defense attorneys asking for ASR (to be turned down by the prosecutor) and seemed to be aware of the DA's office policy (where any existed) of objecting to ASR.

Very few attorneys or judges had actually seen instances of ASR either being asked for, agreed to, or ever being mentioned either in negotiations or in court. Perhaps because of its limited use, most court officials, when asked, struggled to come up with an example or instance where ASR might be the appropriate plea agreement in a felony case. In addition, no criteria for ASR sentencing were written in the JRA legislation (other than what prior record level and current conviction class an offender must be sentenced in to be considered eligible), perhaps contributing to the lack of clarity for attorneys and judges in identifying a situation where ASR would be useful.

The DA's stance had a chilling effect on the use of ASR not only by denying a proposed ASR sentence, but by often preempting its proposal by defense or the court. Based on responses in the field, the practice of ASR could benefit from a clearer definition of its goals and intended target population, the programmatic resources available to achieve them, and the rate of successful outcomes such as in-prison program completion and reduced individual recidivism. While it is too soon to assess the rate with which courts will impose ASR sentences, the current opposition to its use by prosecutors makes ASR an insignificant factor in the courtroom, and places in doubt its future utilization in plea deals or sentencing decisions. This reluctance to use ASR might change over time, but so far it does not seem to have had a meaningful impact on its stated goals of prison bed savings and rehabilitation.

Overall, the JRA provisions did not directly change or expand many sentencing options, and perhaps as a result, there were few perceived or noted changes in sentencing practices. However, judges were aware of the potential impact of certain pre- and post-sentencing decisions, although the extent to which they factored into their sentencing practices at this point remains unclear. As players in the criminal justice system better understand each others' application of JRA provisions and better anticipate other players' decisions at the various stages, practices may continue to shift in response.

Post-Sentencing – Supervision Practices

Perhaps the greatest legal impact, and promise, of the JRA plays out in the post-sentencing phase in the case management and supervision of offenders on probation. Through the increased focus on the RNA performed by Community Supervision post-sentencing, and the expanded authority of probation officers managing offenders in the community, supervision practices and case management have been substantially changed. Interviews with chief probation officers and probation and parole officers revealed a patchwork of familiar patterns mixed with new policies and procedures, superimposed on a background of resource realities – most notably the number and expertise of officers and the availability of programs and services.

Chiefs noted that officer "buy-in" to JRA practices related to length of service in Community Supervision. As expected, newer officers and those with social services background more easily adapted to supervision practices post-JRA, while those who had been probation officers longer and/or had law enforcement backgrounds were more entrenched in pre-JRA practices and skeptical of the JRA changes.

Chiefs repeatedly mentioned high caseloads as being a problem, one which has a direct impact on the ability of officers to properly supervise offenders. One chief suggested that having "floaters" available statewide to cover offices that are short-staffed would alleviate some of the burden when dealing with turnover, promotions, sick leave, and maternity leave. While probation officers have increased responsibilities under the JRA, effective case management and supervision strategies are still determined, to a large degree, by the caseload.

Supervision Practices and the Risk Need Assessment

When offenders are sentenced to probation, they are assigned to probation officers at random (based on caseload levels), except in districts where officers carry specialized caseloads and are assigned certain types of offenders. Specializations reported across the sites included the following high-risk offenders: community threat group offenders (*i.e.,* gang members), drug treatment court offenders, sex offenders, domestic violence offenders, and, in some districts, high school age offenders. During the first 60 days of supervision, officers must complete the RNA, which is comprised of three components: the Offender Traits Inventory-Revised (OTI-R), the Officer Interview and Impressions, and the Offender Self-Report. By policy, each officer must complete six offender management contacts during the initial supervision period. Information officers obtain through those six contacts (both in-home and office contacts) is included in the RNA.

While North Carolina does not, as a matter of course, conduct pre-sentence investigations for court-bound offenders, the RNA has been used by probation, in a variety of iterations, for a long time. The JRA has not only introduced a new revised and validated version of the assessment, it also assigned it a more central role in supervised probation. The RNA determines an offender's risk and need, assigns the offender a supervision level and, subsequently, informs the selection of controlling sanctions and rehabilitative programs. The sentencing judge maintains the authority and discretion to impose conditions of probation at sentencing; the probation officer, upon completing the RNA (in effect, a post-sentencing report), can use delegated authority to add to the sentence a wide variety of controlling and programmatic conditions, based on the results of the assessment.

Once the RNA is completed, the resulting Supervision Level (SL) is locked in. If an offender is assigned to SL 4 or 5 (the lowest levels of supervision, which are eligible for remote reporting), officers must, jointly with their chiefs, determine if remote reporting is appropriate for those offenders. A review is performed annually, or following a major change or a new charge/conviction. The SL is system-generated, with no override, to enhance officer confidence in the validity of the RNA instrument. Once the SL has been established, officers design a case management plan, with minimum requirements of contact and conditions (based on Community Supervision policy).

The acceptance of the somewhat arbitrary nature of the RNA is facilitated by some emerging solutions and new practices. While the SL cannot be changed in the automated system, officers can use discretion in deciding how to manage offenders above the assigned SL. If the SL seems insufficient, the probation officer, often with the help of the chief, will design a case plan beyond the minimum required for that level, use delegated authority, change requirements, and/or increase contact. For example, offenders determined "not appropriate" for remote reporting can be required to have regular contacts at specified frequencies determined by the supervising officer. Conversely, to manage their caseload, officers can move offenders to unsupervised status, if conditions are met, fines paid, etc. Most cases are not supervised beyond minimum standards, perhaps due to higher caseloads that limit officer flexibility in supervising offenders above what is dictated by policy, but more likely due to the fact that most officers and chiefs reported the RNA generally places the right offenders in the appropriate SL.

Due to the centralized nature of probation in North Carolina, there was a degree of consensus among probation officers about both the established RNA process and its goals and uses. Officers discussed the assessment and the problems with it in very similar ways. They noted the unclear phrasing of some RNA items, gaps in criminal history (especially for out-of-state offenses), better understanding of how the RNA factors are weighed, and the need for more training and periodic refreshers. The generally positive response, however, from the field to the RNA has to do with a number of factors: a long pre-JRA history and familiarity with offender assessment measures; more legally delegated authority at the probation officer's disposal; and informal ways to adjust the actual supervision short of a formal override of the RNA-determined SL.

Given the fact that the assessment is conducted post-conviction and sentencing and within 60 days following placement on probation, court professionals are generally not familiar with the

RNA. When asked about the assessment, many referenced their past use (and liking) of the now-defunct Sentencing Services. Most were aware of probation's responsibility to know who does or does not need much supervision and programming, and professed their trust in officers doing a good job. That said, many court professionals shared the sentiment that information about an offender at an earlier stage would be helpful, with the caveat that they would want to know more about who is performing the assessment and the "science" behind it. A few public defenders, however, were uncertain about the early availability of information to be shared with prosecution ("it can cut either way"), and were cautious about the probation officers' qualifications and transition from law enforcement officers to expert counselors (especially with more complex offender issues, such as sex offenses or mental health problems). Overall, court professionals believed that the appropriate parties (*i.e.*, prosecution and defense) already have their hands on needed information, but were generally not opposed to having more information available to them at any stage of the process.

The RNA is a building block in tailoring supervision and services to keep the public safe while rehabilitating the offender. That implies not only an accurate assessment, but available and accessible resources to provide appropriate levels of supervision and sanctions matching offender risk, and available and accessible evidence-based programs and services to match concomitant needs. The field has indicated its confidence in the assessment tool, which is a first step in managing offenders – and one that is anticipated to contribute to ultimately changing offender behavior.

Supervision Practices and Delegated Authority

After determining the SL and preparing a case management plan, offenders' compliance with the terms of probation and meeting offenders' needs becomes the focus of supervision. Through delegated authority, probation officers have a number of options, many expanded under the JRA, to address offenders' risk and need and/or to manage offenders unwilling to comply with conditions of probation.

Under Structured Sentencing, a probation officer is allowed to impose certain additional probation conditions on an offender (*e.g.*, community service, substance abuse assessment and treatment) without action by the court. The JRA expanded delegated authority in two ways – by adding to the list of conditions an officer may impose on a probationer (*e.g.*, quick dips, house arrest with electronic monitoring) and by broadening the circumstances in which the officer may impose them. This expansion was necessitated by the JRA's renewed emphasis on post-sentencing decisions related to offender assessment and individualized supervision and services. While the RNA guides the level at which the offender will be supervised and helps the probation officers to select programs and services aimed at changing criminogenic needs, delegated authority serves the probation officer to graduate sanctions in response to non-compliant offenders. This graduated use of delegated authority, a DACJJ preference, is both hoped to get the offender's attention and save resources by reducing violation hearings, CRVs, and revocations.

To a great extent, judges are delegating authority (that is, they are not checking the "do not delegate" box on the judgment) at sentencing. A few judges reported that in some

circumstances, they will delegate authority for certain conditions but not others. Across the state, probation officers shared the opinion that judges are delegating authority to officers, but the extent to which they are using it is unclear.

Across the state, chief probation officers were enthusiastic about expanded delegated authority. They reported putting policies and procedures in place regarding the use of delegated authority and have encouraged officers to use it to address offender noncompliance. However, early implementation of delegated authority suffered from the expedited timetable of the JRA, which resulted in a seeming reluctance by the field to use it. For example, DPS delayed the use of quick dips due to the additional time needed to develop policies for their use. As a result, officers may still be getting used to having and using the quick dip option. Some officers reported using delegated authority to increase the frequency of contacts for offenders on their caseload; others reported using delegated authority to impose curfews immediately following a determination by the OTI-R that an offender was above a certain risk level. Limited use of the additional conditions of community service, electronic house arrest, and quick dips was also reported. And some officers were not utilizing delegated authority at all, whether due to a lack of available resources or other unspecified reasons.

Court professionals did not have strong opinions regarding delegated authority and many noted that the issue of delegated authority is rarely mentioned or heard in court. A few public defenders expressed skepticism about probation officers' expanded authority without judicial oversight; some attorneys commented on their feeling that delegated authority undermines the court's power. However, others felt that probation officers are closer to, and more knowledgeable about, the offenders and welcomed the use of graduated sanctions and saving court time. Based on some comments, trust in handing over this added authority was influenced by the perceived professional credibility of local probation officers.

While judges are allowing authority to be delegated to the probation officers, how often that authority will be exercised and the impact on the offenders remains to be seen. The long-term effectiveness of expanded delegated authority will depend to a certain extent on officers using their authority to appropriately match sanctions and conditions to offender risk and need. The frequency of use will depend on the level of comfort officers feel with their expanded authority, as well as their confidence in the outcomes. At this juncture, delegated authority has yet to become a frequently used tool by probation, particularly with the quick dip sanction (*see* below). However, officers' use of delegated authority may be increasing with the growing understanding of its purpose and encouragement from chiefs.

Supervision Practices and Responses to Offender Non-Compliance

Some of the more novel provisions contained in the JRA created new tools to address offender non-compliance; most notably, the quick dip confinement and the CRV. Both tools have added an interesting dimension to post-sentencing supervision practices and, as reported by the field, have a varying effect on the violation process with regards to their respective use and perceived effectiveness.

Quick Dip Confinement

As noted above, one of the expanded authorities delegated to probation officers is the quick dip confinement. This new sanction, created by the JRA, consists of a period or periods of confinement in a local facility. The periods of confinement are limited to six days per month for no more than three months, and each period consists of either two or three consecutive days. The quick dip sanction is available to the judge as a condition of probation imposed at sentencing and to the probation officer as a delegated authority (if the officer determines that the offender has failed to comply with one or more of the conditions of probation). The offender must waive his right to a court hearing before the probation officer can impose a quick dip.

Quick dips are intended to be an immediate response to violations of probation with the goal of getting an offender's attention to correct noncompliant behavior, hopefully putting offenders on a path to successful completion of probation. While the quick dip went into effect for persons placed on probation on or after December 1, 2011, the implementation of the sanction was delayed until July 1, 2012 while the Department developed policies and procedures regarding its use. This delay may have impacted the limited implementation of the quick dip sanction reported by the field.

Judges were not using quick dips at sentencing. Many reported imposing split sentences instead, sometimes using short periods of confinement (*e.g.*, jail weekends), which judges have always had the authority to impose. Court professionals also stated that they are generally not aware of quick dips being used by probation officers. This may be due to the fact that imposition of quick dips in the community occurs post-sentencing, the stage at which court officials usually are not involved.

A handful of defense attorneys expressed concerns with the waiver process used by the probation office in imposing the quick dip; the threat of the arrest and subsequent violation hearing if an offender did not waive his rights could be considered coercive. Other concerns included how credit is recorded for quick dips and whether noncompliant behavior that was addressed by the quick dip can be included in future probation violations.

Chief probation officers reported office policies regarding the population of offenders eligible for quick dips (those assigned to SL 1-3), but officers have discretion in deciding whether or not to use the sanction on a case-by-case basis. Chiefs also stated that not all of the probation officers were comfortable with using quick dips for a variety of reasons; some expressed concern about the impact of quick dips on jail space and were generally aware of any local jail capacity issues.

Probation officers offered a nuanced array of observations from their experiences. Many have not used quick dips at all, viewed it as disruptive to the process of violating a non-compliant offender, or balked at the time spent in processing it. They noted that it takes a great deal of time to complete the paperwork for both the quick dip and the alternative violation hearing (if the offender does not waive his right), arrest the offender, transport him to jail, and take him through the intake process. Investing the effort in a quick dip means taking time away from their other caseload tasks and displacing meetings they had scheduled with other offenders. Further, addressing the violation with a quick dip leads to "losing" that violation if they take the offender

back to court later. At least one office had attempted to circumvent some of the difficulties in implementing the quick dip using creative case management strategies. Officers scheduled appointments so that multiple dips could be handled on the same day for offenders that were in violation and eligible to be "dipped." This strategy helped maximize the use of limited resources and personnel by allowing officers to plan their workload and caseload responsibilities around the time needed to use the quick dip sanction.

Aside from logistical and case management challenges, probation officers also questioned the usefulness of quick dips, with disruptions to the offender's progress on probation and periods of confinement too short to be effective. Officers also commented on the need for a more targeted use of quick dips for groups such as youthful offenders, unemployed offenders, first offenders and offenders who had not been to jail before, and offenders who were in lower supervision levels. According to Department policy, some of these offenders are not eligible for quick dips.

Some probation officers did report using quick dips as an immediate reaction to certain violations, such as failing a drug test. They preferred this to the lengthier court process but were not sure of the long-term effects. Other officers felt that, for rehabilitative purposes, offenders need long-term probation with added conditions and drug treatment rather than quick dips.

Generally, there seemed to be confusion about the purpose of quick dips, their target population, and their effectiveness. Some court professionals expressed concern about the mechanics of using quick dips, especially as they relate to the waiver issue, and the impact of using quick dips on caseloads and jail capacity. There was some recent evidence suggesting that districts have begun using quick dips more frequently; this could be due to a policy shift by the DPS or due to creative strategies to make implementing quick dips feasible for offices with limited staffing and resources.

Confinements in Response to Violation and Revocations

For continued noncompliance on probation, probation officers often must look beyond options available to them through delegated authority. One of the primary options available in the provisions of the JRA for probation is the CRV, serving a dual rehabilitative and cost-saving function. While quick dips are intended as a first-line and immediate response to get a probationer's attention, CRVs are designed as a more serious response to provide intensive programming to probationers while confined temporarily – up to 90 days in jail for misdemeanants and 90 days in prison for felons.

CRVs are expected to save resources when coupled with another JRA provision which eliminates the option to revoke probation in certain instances. Offenders who violate probation can only be revoked for absconding or committing new crimes, while "technical" violations result in a CRV. An offender can only be revoked for technical violations after serving two CRVs. The CRVs and limits to revocations are expected to reduce the number of prison beds needed for revocations; further, the rehabilitative aspect of the CRV is expected to lead to more successful completions of probation and to reduced recidivism.

The CRV was one of the first provisions of the JRA to go into effect (effective for violations of probation occurring on or after December 1, 2011) and did not experience the delayed implementation for policy/procedure development as some other JRA provisions (*e.g.*, quick dips, TECS). Thus, there was abundant discussion and opinion from the field on its use, utility, and effectiveness in achieving its goals – reducing revocations to prison and providing an effective response to probation violations via programming and a "time out" from participating in the community. Responses from the field suggest cautious support for some of the underlying rationale for CRVs, criticism of its usefulness, and a great degree of creativity on the part of practitioners to interpret and remold it according to their needs. While opinions and utilization varied by practitioner roles, the most meaningful variation in implementing CRVs ran along the felony/misdemeanor line.

CPPOs stated the preferred model for implementing CRVs: case-by-case utilization following repeated technical violations and the exhaustion of other available options. The punitive impact of jail/prison incarceration should be supplemented with continuing intensive rehabilitation, leading to the successful completion of probation. Most viewed the success of CRVs as contingent upon the length of confinement and the rehabilitative programs available to the offender in prison or jail.

Although the intent of the CRV as envisioned in the JRA (and by Community Supervision policy stated through the chiefs) was the same for both Superior and District Court, in practice, CRVs seem to operate differently in felony and misdemeanor settings with two primary functions: (1) as a sanction in response to technical violations (felons); and (2) as a revocation, also known as a terminal CRV (misdemeanants).

Somewhat closer to the original intent, PPOs and judges use CRVs as a substitute for felony revocations – a sanction imposed in response to technical violations. PPOs reported recommending CRVs for technical violations that were so egregious and/or numerous that they rose to the level where officers would have previously recommended revocation. Some technical violations were not necessarily viewed as serious enough to warrant a 90-day confinement, but officers now need the "notch" of a CRV to lay the path for revocation in the future. Many officers and judges expressed frustration with having to choose between the notch and what they viewed as an appropriate response to technical violations. In general, however, PPOs and judges looked for the same misbehaviors triggering a CRV as the ones they would have previously looked for to revoke probation for felons.

Subsequent CRVs for felons were rarely mentioned. Some parties reported that they assumed most offenders came in with revocable offenses (*i.e.*, a new conviction or absconding), and were getting revoked instead. Others opined that perhaps the cases had not been around long enough. Another suggestion was that shifting caseload assignment means officers might not retain the same offenders through the duration of the supervision period and, therefore, would be unaware of any subsequent CRVs. There were no instances reported of revocations for felony offenders due to having served two prior CRVs.

For misdemeanants, the CRV has essentially replaced revocations of probation for technical violations. In view of shorter available misdemeanor sentences, judges will often impose a

terminal CRV for misdemeanants; that is, a CRV of up to 90 days followed by termination of probation. While the suspended sentence is not activated in this scenario, the outcome (period of active confinement without offenders returning to probation after release) is virtually identical to a revocation. With some exception for the more serious misdemeanors with longer sentences, the CRV generally "uses up" the entire suspended sentence; in the occasions when it does not, judges reported modifying the original judgment to allow for termination of probation upon the completion of the CRV. Often, this modification includes a reduction of the original sentence.

Subsequent CRVs did not occur for misdemeanants, nor did revocations due to having served two prior CRVs. The reason for the lack of second CRVs for misdemeanants is the same as the logic behind the common practice of terminal CRVs: misdemeanants' sentences are not long enough to allow for second or third CRVs to be imposed. While judges have discretion to determine the CRV length with misdemeanants, most indicated they were not inclined to impose a short CRV and continue offenders on probation because at that stage (the probation violation hearing), they lacked confidence in the offender's ability to successfully complete probation and wanted to best preserve courtroom and officer resources.

While the terminal CRV practice seemed to be the standard in District Court, some districts reported its limited use in Superior Court. Judges, attorneys, and probation officers repeatedly mentioned that some offenders, regardless of whether they are felons or misdemeanants, are not good candidates for probation. Some PPOs requested terminal CRVs, to remove from their caseload offenders they could not work with or who were unwilling to follow the conditions of probation, but utilized continued probation for offenders they still felt could be helped. Additionally, practitioners noted that offenders themselves want to "take their time;" terminal CRVs are a reward for many offenders, exiting probation early without any suspended sentence over them and/or no requirement of PRS. Misdemeanants may receive shorter, modified sentences as the result of terminal CRVs, realizing an additional benefit from this practice—reduced active time compared to their original sentence.

One by-product of the CRV is the reported increased use of the split sentence, which has now become a popular alternative response to violations. Due to the addition of PRS for low-level felons and increased length of PRS for the more serious felons, split sentence minimums are longer. Judges also have discretion to determine whether to give offenders credit towards a split sentence (which is not the case with CRVs where judges must give credit for time awaiting a violation hearing towards the duration of a CRV). Frequently, splits are coupled with a termination of probation. Using split sentences does not offer the notch of the CRV to lay the foundation for revocation, but in some cases it was still a preferred option for the aforementioned reasons (longer minimums, discretion in application of credit, option to terminate probation following the split).

CRVs may also play a role in plea negotiations. Some prosecutors claimed to be more reluctant during felony plea bargaining to settle for a probation sentence, knowing how difficult it is for offenders to be revoked. However, defense attorneys offered positive feedback on CRVs because their clients could not be automatically revoked for violations on probation; they hoped some would benefit from increased time in the community.

The JRA limitations on revocations seem to have motivated practitioners to develop strategies around them (*i.e.*, the terminal CRV, split sentence plus termination of probation, changes in plea offers) when they feel it necessary. There is, at least for now, a much smaller number of cases with "true" revocation. Some parties perceived an increase in the frequency of revocations for absconding; however, most reported the courts were using the same case-by-case analysis to determine whether or not to revoke (when allowed), and that the limitations on revocations did not make judges any more or less likely to revoke probation when they were able to.
So far, the impact of the CRV is notable. Judges expressed their concern about a general loss of authority, with the perception that disobeying a judge's order carries no consequences. Probation officers also felt probation in general has been weakened by the limits on revocations and by only having the option of the CRV to respond to violations. Some judges and many attorneys were critical of the fixed-length 90-day CRV for felons; most felt that the 90 days are too much for most violations, and may even be detrimental. The majority of those interviewed expressed a preference for more discretion in imposing shorter felony CRVs. Others were critical of CRVs that rarely brought real behavior change and only resulted in "more hoops to jump through" for the same results, or thought that noncompliant offenders deserve revocation, not CRVs. A few judges also reported considering taxpayer expense in making decisions about whether to terminate probation following a CRV or to help "officers manage their caseloads."

The limited availability of revocations is, in a way, the flip side of the use of CRVs. The CRV being "the only game in town," it was perceived to be used more often than pre-JRA revocations, numerically sending more offenders to prison (even if for shorter periods). Given the frequency and role CRVs play as either a replacement for revocation or as a sanction in response to technical violations, it seems that the clear view emerging in the field of the CRV is one of punishment, and not of rehabilitation.

Likely influencing the practitioners' views of the CRV as punishment over behavior modification is the limited evidence suggesting that CRVs are actually providing meaningful opportunities for rehabilitation. For misdemeanants, rehabilitation is unlikely to be a part of the current CRV experience, given that most have such short sentence lengths, and the period of confinement is non-standard. Additionally, with few exceptions, misdemeanants serve CRVs in jail, where rehabilitative programs are rarely available statewide. For felons, practitioners noted that offenders serving a CRV often come out angrier and set further back in their rehabilitation, and cited no knowledge of any programming occurring during the 90 days. Many also noted that while confinement of 90 days might be too long of a response to violations, it may not be long enough for any meaningful programming to occur.

While widely used by the field, the implementation of CRVs has raised a number of issues. The no-revocation rule is perceived to undermine the authority of the court and probation, and change the plea bargain dynamics. The lack of programming in prisons, and especially in jails, raises questions about the rehabilitative potential of CRVs. In the case of felonies, the fixed 90-day length restricts judicial discretion. More significantly, in the case of misdemeanors, a lengthy CRV conflicts with the very structure of misdemeanor penalties with short active sentences further cut by credit for time served. Creative solutions emerging in the field include terminal CRVs for misdemeanors, and increased use of split sentences, often with termination of probation, for felonies. These patterns most likely conflict with the original intent of JRA for

rehabilitation, but might result in (unintended) savings in prison/jail resources and probation supervision costs.

Supervision Practices and the Post Release Supervision Population

A subset of offenders under Community Supervision includes the post-release supervisees. These offenders serve active sentences and are returned to "probation" following their release from prison for a set period of supervision. The JRA expanded post-release supervision (PRS) to all felons. Nine months of supervision is required for Class F through I felons and twelve months for Class B1 through E felons (increased from nine months pre-JRA). Sex offenders receive five years of supervision. Class B1 through E felons can be revoked for up to twelve months (up to five years if they are sex offenders), while Class F through I felons can be revoked for up to nine months. Unless the offender commits a new crime or absconds from supervision, he can only be revoked for three months at a time for violations of PRS conditions. The full impact of the PRS changes has not been realized at this stage of implementation; however, feedback from the field indicates that the expansion of PRS has had some impact on front end decision-making, as well as presented some unique challenges for supervision on the back end.

When asked about the effect of the expansion of PRS on pre-sentencing and sentencing phases of the criminal justice process, attorneys anticipated two effects: (1) the imposition of fewer active sentences or fewer "straight" active sentences; and (2) the imposition of longer split sentences, given the increased maximum sentences under the JRA.

As noted previously, court professionals reported that the expansion of PRS has had a limited effect on the pre-sentencing phase, particularly related to plea bargaining. Prosecutors generally focus on the minimum sentence the offender must serve and not the maximum; however, some pointed out offenders are less likely to want to take an active sentence when they know that supervision will follow it. This presents some difficulties in structuring plea agreements with defense attorneys put in a position of explaining to their clients the additional supervision period following an active sentence (which frustrates some offenders).

Many judges expressed frustration over the fact that they cannot just sentence felons to a short active sentence with credit for time served. They did not see the purpose of using a probation officer's time to supervise an offender who does not want to be under supervision. Defense attorneys agreed and questioned the value of putting an offender on PRS after they served an active sentence. They also noted PRS was of particularly little benefit and a potential waste of resources for those offenders who have failed on probation, been revoked and had their suspended sentence activated, and then had to return again to probation as a post-release supervisee. Low-level felony offenders who fail on PRS and get revoked could end up serving twice their original sentence.

The expansion of PRS has also had a limited effect on sentencing. While plea bargaining controls sentencing to a large extent, prosecutors and defense attorneys reported that the longer maximum sentences have increased the amount of time available for split sentences. As noted above, judges seem to be imposing splits with more frequency; it is unclear if this is because sentences are longer due to PRS (which increases available split sentence lengths) or the result of

the changes to Intermediate and Community punishment options. Attorneys observed that some judges are more likely to sentence some offenders to active sentences, especially if they have a lot of pre-trial credit, so that the PRSP Commission can deal with the violations of supervision (which happen outside of the court process). Prosecutors and defense attorneys also observed a new practice at sentencing – some judges are ordering fines, restitution, and costs as conditions of PRS.

Offenders on PRS who violate conditions set by the PRSP Commission upon release from prison may be revoked in certain instances (absconding or committing a new crime) or serve a 90-day period of confinement in prison for technical violations, similar to a CRV for regular probationers. The responses to violations are determined by the PRSP Commission, based on recommendations from PPOs. Court officials are generally not involved in the PRS violation process and, therefore, had limited knowledge of how frequently post-release supervisees were committing violations and the nature of the typical responses to those violations. However, some defense attorneys reported being appointed to represent offenders in violation hearings, particularly in cases where an offender receives new charges while he is on PRS. Some defense attorneys expressed concern that offenders are held without bond and with no right to counsel for violations of PRS, which is different from the probation violation process.

Generally, court professionals were unclear of the purpose of the PRS changes, with only a few expressing the opinion that the supervision period might be beneficial for some offenders. Some noted that if the purpose of PRS was to help offenders re-enter the community, nine months of supervision was unnecessary for low-level felons that have been away from the community for a relatively short period of time. Many did not observe PRS reintegration efforts occurring either pre- or post-JRA, questioned the usefulness in its expanded form given limited officer resources, and felt that offenders need job training and skills programs more than reintegration. Some suggested judges be given discretion in determining the length of PRS assigned to an offender or discretion in assigning any period of PRS. A small number of practitioners expressed the opinion that offenders with short sentences should not have PRS.

While the PRS changes have had a moderate effect, so far, on the earlier stages of the criminal justice process, its biggest impact affects the post-sentencing phase, when Community Supervision must actually supervise the PRS population. Chief probation officers reported that PRS policies were similar to probation policies; no special supervision practices had been developed for post-release supervisees. Officers assess the supervisees during the first 60 days of supervision following their release from prison and then lock in the supervision level. PPOs carry a mixed caseload of post-release supervisees and probationers, with offenders in all five supervision levels.

As noted above, the full impact of PRS has not yet been realized; however, an increasing number of JRA-sentenced offenders are being released from prison to PRS. This has far-reaching consequences for Community Supervision, mainly in maintaining manageable caseload levels and evidence-based supervision practices. CPOs repeatedly mentioned concerns about caseloads due to the number of offenders being released to Community Supervision on PRS; these offenders are coming out of prison faster and becoming an increasingly larger percentage of their officers' caseloads.

On a practical level, chiefs and PPOs noted that picking up the offenders from prison takes time and manpower. Officers do not always receive sufficient notice that an offender will be released onto PRS; because of the amount of time often required to pick up offenders from facilities across the state, they would like to see direct release for post-release supervisees. With an increasing population on PRS, many chiefs and PPOs pointed out that they will need more community resources, particularly housing, to meet these offenders' needs. The relatively shorter period of supervision for this population compared to the regular probation population presented somewhat of a dilemma for officers: while nine to twelve months meant faster turnover in exiting their caseloads and keeping levels manageable for effective supervision practices, it also meant an accelerated timeline for offenders to realize programmatic benefits or rehabilitative services. Some officers reported taking into account the length of PRS left on a case before bringing forward a violation.

Due to the time it takes offenders to reach PRS, probation officers have not had many JRA cases go through the violation process yet. There were few reported instances of 90-day periods of confinement in response to technical violations and even fewer reported instances of revocations under the JRA changes. Of the cases that have gone through the hearing process, some officers stated they usually get what they recommend while others noted that the PRSP Commission has reduced the period of revocation (if they are revoked at all). Most PPOs agreed that the PRS violation process is quicker and easier than the probation violation process and does not require as much paperwork; however, they also stated there is little chance of revocation in most cases. On the whole, chiefs and probation officers stated their relationship with the PRSP Commission was positive.

Even with the full impact of the PRS changes not fully realized, the field has noticed and reported effects on pre-sentencing, sentencing, and post-sentencing decisions. Fully implemented, PRS has the potential to continue to affect all stages, perhaps with an impact on prison bed utilization (increased number of plea agreements with short, active sentences at the pre-sentencing phase; increased imposition of splits for longer periods of time at the sentencing phase; and increased number of violations and revocations of PRS post-sentencing), and most certainly with an impact on officer and community resources.

Resources

The criminal justice process takes place on a background of fiscal realities, with a particular focus under the JRA on the post-sentencing phase. The overarching intent of the Act was to contain correctional spending on prisons (by limiting certain types of entries to prison and enhancing community corrections) and reinvest those savings in community supervision. By reducing recidivism through rehabilitative programs and effective, targeted supervision designed to change offender behavior, the JRA was to realize even more savings to again, be reinvested in community supervision. While resources have always been at the forefront of any discussion about probation and its success in rehabilitating offenders, the availability, quality, and cost of resources for community corrections has been brought to further focus with the JRA.

The JRA reaffirmed the concept of rehabilitation and gave additional tools to probation officers to assess offender needs (through the revised and validated Risk Need Assessment or RNA) and to use delegated authority to direct offenders to rehabilitative resources without having to go back to court. The creation of TECS to fund evidence-based programming statewide was a keystone of the JRA, with a focus on CBI programs and substance abuse (SA) treatment. The success of the JRA depends, to a large extent, on whether resources match the needs of the offender population and whether those resources are effective in eliciting positive change in offender behavior. While it's too early to evaluate whether the JRA is achieving the goal of reduced recidivism through effective community supervision and rehabilitative efforts, it is clear there is widespread concern among both probation and court personnel about the availability, accessibility, and quality of current resources.

No district visited reported having adequate resources, although availability varied by county. Treatment Accountability for Safer Communities (TASC) seemed to be the most available gateway to resources, with referrals to SA and CBI programs; however, the relationship between TASC and Community Supervision/TECS remains unclear. In places that used to have a day reporting center, those were still considered better than the resources currently available. A common complaint among PPOs was the ability to accurately identify offender needs (through the RNA), without being able to refer offenders to programs to address those needs (due to lack of availability). Almost every interviewee pointed to the growing problem and intersection between mental health and the criminal justice system. Overwhelmingly, mental health services were mentioned as the greatest need in all districts visited, followed by SA treatment. PPOs also pointed to more practical resources needed for probationers including employment, job training, vocational skills, and education. Overall, there were no programs clearly recognized as evidence-based (perhaps with the exception of CBI), and some officers noted that the only uniformly available tool to serve the offender is the PPO.

Court officials expressed general support for the notions embodied in the JRA, but many doubted the ability and willingness of some offenders to change, the large caseloads and qualifications of PPOs to deal with more difficult offenders (due to the significant number of offenders with mental health problems), and the availability of quality programs that could make a difference with some offenders. In general, they questioned whether "the state can achieve and maintain the goals of the JRA," without a willingness to "reinvest" prison savings into community resources.

When resources are available, access to them is further curtailed by certain eligibility requirements dictated by Community Supervision policies and logistical problems faced by the offender population. Based on the RNA, only certain offenders (SLs 1-3) that have a certain number and combination of criminogenic needs are eligible to be referred to appropriate programs. This policy limits the pool of eligible offenders for referrals and puts a strain on programs receiving TECS funding, which rely on referrals and program participation to remain viable. Although PPOs are being encouraged to refer as many eligible offenders as possible to available programs (many officers mentioned referral quotas), each officer has discretion to determine whether referral and participation are appropriate for individual offenders (provided programs are not court-ordered).

Common logistical problems or barriers offenders face in program participation include transportation, cost, and employment. In rural areas (and some urban areas), efficient and consistent means for offenders to get to programs may not be available (*e.g.,* no mass transit options). This is especially challenging for those areas where districts are served in "clusters" and services and programs may be located in a neighboring county, often a great distance away. Costs to probationers were repeatedly mentioned by a majority of interviewees. Offenders ordered to a program by the court, or referred by the PPO, often cannot afford the cost of the initial assessment or follow-up treatment, especially in counties where providers do not offer a sliding scale of costs. To the extent private providers exist, most offenders cannot afford treatment while free programs are almost unheard of or nonexistent. Employed offenders face other challenges; frequent appointments or classes may conflict with work schedules, which could interfere with other positive progress (*e.g.,* maintaining a job) offenders might be making.

Post-release supervisees face separate issues from regular probationers. Those coming out of prison on PRS having served long active sentences often have nowhere to live and finding housing can be a serious problem. Many end up homeless due to lack of available homeless shelter space, even though a requirement of PRS is for offenders to secure stable housing.

Resource availability impacts both probation and the courts. Most PPOs identified the clear link between case management and resources and felt that the lack of resources will have an impact on probation outcomes or will affect offenders in the long run. Court personnel and PPOs noted that noncompliance with conditions imposed by judges or by the PPOs will often lead to a violation hearing, but PPOs and prosecutors have a hard time classifying some violations as "willful" in certain situations (*e.g.,* lack of stable housing for post-release supervisees, offenders unable to afford treatment). Limited services and programs can be discouraging to offenders trying to meet with success on probation; those who want treatment but either cannot afford it or cannot access it may give up trying to comply with the conditions of probation at all, perhaps leading to more probation violations and, ultimately, revocation. Plea bargaining practices may also be affected by resource availability with prosecutors less inclined to offer probation if they do not see evidence that programs are available and effective. All of these factors over time have the potential to affect the utilization of prison beds.

Many of the issues surrounding community resources are not new, but the promise of reinvested savings under the JRA depends on (1) the availability of programs that match offender needs and (2) the effectiveness of those programs in reducing recidivism. At this stage of implementation, feedback from the field indicates current resource levels are not sufficient and the efficacy of those resources that are available is still unclear.

V. DATA ON THE IMPLEMENTATION OF JUSTICE REINVESTMENT

Overview

The current report highlights data on the implementation of the JRA throughout CY 2013, offering a first look at the changes in the criminal justice system – particularly to sentencing and post-sentencing practices – brought forth by the new law. However, it is important to recognize that these data only reflect evolving JRA practices during the early stages of implementation. The first wave of cases under any new sentencing scheme is not necessarily representative of the practices that will occur in the future, after the field has learned and used the new tools and options available and has become more comfortable with the provisions under the new law. In addition, it will take time for the cases processed under the new law to encompass the later-date provisions and the more slowly moving serious cases in the system. It is important to recognize that during the time period being examined field practitioners were learning to use the new tools under the JRA, as well as how to capture that information in automated systems.

The majority of the information reported will focus on CY 2013 (January through December 2013). Given that the correctional system was most affected by the changes under the JRA, the management information system used by DPS – OPUS – is the primary source for data for this report. Much of the information was obtained from Rehabilitative Programs and Service's Automated System Query (ASQ) and Justice Reinvestment Data Dashboard, which are based on OPUS data. Information about the Statewide Misdemeanant Confinement Program was obtained from the North Carolina Sheriffs' Association.

Overall, the data provided in this report will allow for the examination of the use of the new tools and approaches available under the JRA, as well as a preliminary look at their effect on the prison and community corrections populations. Future reports will focus on the impact of those tools on more long-term outcome measures such as recidivism. The Commission's legislatively mandated reports, such as the biennial recidivism study and the annual statistical report, will be an important resource for future information.

This section follows the process flow set forth in Section IV of the report, but singles out provisions that have sufficient aggregate information captured in automated data bases.

Sentencing

The primary changes to sentencing under the JRA included modifications to the existing habitual felon status offense, the creation of a new status offense for habitual breaking and entering, and the establishment of Advanced Supervised Release. The potential pool of convictions for each of these sentencing options is large, but currently these options are used for only a portion of the eligible offenders. The usage of these tools is determined through court decisions and practices may vary across the state. Any changes in the utilization could have an impact on prison resource needs.

Habitual Felon

The effect of the modifications to the habitual felon law can be seen by examining the offense class for habitual felons. Previously, habitual felons were sentenced in Class C. Under the new law, habitual felons may be sentenced in Class C, Class D, or Class E depending on the offense class of their substantive offense. ASQ data indicate that there were 868 entries to prison for offenders convicted and sentenced as habitual felons (as their most serious offense) in CY 2013. While over half of these offenders were sentenced as Class C felons (57%), 21% were sentenced as Class D felons and 22% were sentenced as Class E felons. Based on the statute, it is possible that an offender convicted as a Class E habitual felon could receive a non-active sentence, depending on prior record level. However, there were no Class E habitual felon entries to probation during this time frame. Overall, habitual felons accounted for nearly 15% of the December 31, 2013, prison population of 37,192.

Habitual Breaking and Entering Felon

Based on ASQ data, there were 117 entries to prison and 2 entries to probation in CY 2013 for offenders convicted and sentenced for habitual breaking and entering, which is a Class E felony. The monthly prison entries ranged from 6 to 14, with an average of 10 entries per month.

Advanced Supervised Release

Initial data from the Justice Reinvestment Dashboard indicate limited usage of ASR. The prison population of 37,192 on December 31, 2013, included 89 inmates with ASR sentences. In CY 2013, 85 offenders entered prison with a sentence that included ASR. Examination of monthly prison entry data indicates a random, and not increasing, usage of this tool over the course of the year. The monthly prison entries ranged from 3 to 14, with an average of 7 entries per month. Two-thirds (66%) of the entries occurred from January to June.

In CY 2013, 103 offenders with an ASR sentence exited prison. DPS data indicate that nearly all (95%) were released at their ASR date.

Post-Sentencing – Probation

Significant changes to community corrections were mandated under the JRA, including the use of a risk and needs assessment as a strategy in managing offenders, changes relating to violations of probation and revocations, and the establishment of the TECS program. As of December 31, 2013, the probation population was 98,181.[29] Overall, 58% of the probation population was on supervision for a misdemeanor offense, while 42% was on supervision for a felony offense.

[29] This number excludes 6,679 offenders supervised on PRS.

Risk and Need Assessment and Supervision Level[30]

The JRA requires DPS to use a validated instrument to assess each probationer's risk of reoffending and criminogenic needs and to place the probationer in the appropriate supervision level. The Offender Traits Inventory-Revised (OTI-R) is used to assess offender risk and the Offender Self-Report and the Officer Interview and Impressions are used to assess offender need. Using these instruments, there are five levels of risk and five levels of need: extreme, high, moderate, low, and minimal. Of the assessed probation population on December 31, 2013, 10.9% were categorized as being extreme risk, 20.0% as high risk, 35.1% as moderate risk, 27.4% as low risk, and 6.6% as minimal risk. Turning to need level, 20.6% were assessed as extreme need, 14.8% as high need, 38.0% as moderate need, 21.6% as low need, and 5.0% as minimal need.

Table 3
Supervision Level Distribution Based on Risk and Need Assessments
Assessed Probation Population on December 31, 2013

	Risk Level					
Need Level	**Extreme** (R1) 66-100	**High** (R2) 50-65	**Moderate** (R3) 26-49	**Low** (R4) 11-25	**Minimal** (R5) 0-10	**#/% by Need Level**
Extreme (N1)	**L1** 2,069 2.4%	3,949 4.6%	7,649 8.8%	3,675 4.2%	493 0.6%	17,835 20.6%
High (N2)	1,799 2.1%	2,958 3.4%	4,808 **L3** 5.5%	2,866 3.3%	440 0.5%	12,871 14.8%
Moderate (N3)	3,420 3.9%	6,287 7.2%	11,314 13.0%	9,626 11.1%	2,363 2.7%	33,010 38.0%
Low (N4)	1,889 **L2** 2.2%	3,586 4.1%	5,696 **L4** 6.6%	5,931 6.8%	1,650 1.9%	18,752 21.6%
Minimal (N5)	273 0.3%	530 0.6%	1,027 1.2%	1,678 **L5** 1.9%	787 0.9%	4,295 5.0%
#/% by Risk Level	9,450 10.9%	17,310 20.0%	30,494 35.1%	23,776 27.4%	5,733 6.6%	86,763

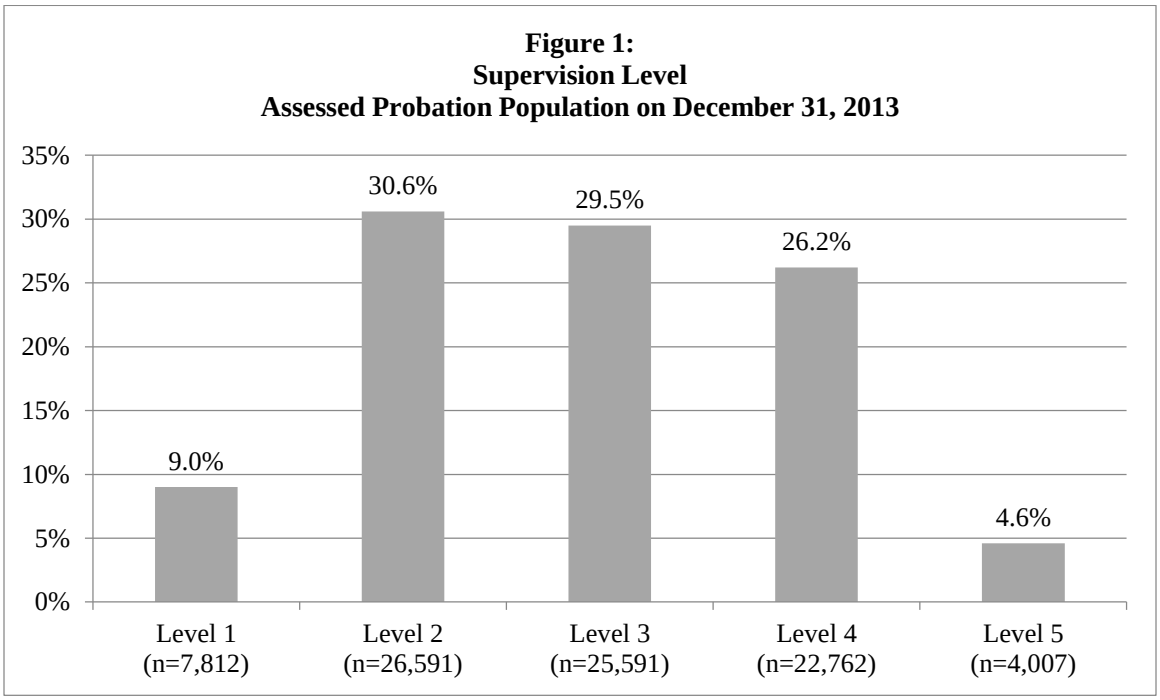
Note: The assessed probation population includes offenders who were available for assessment and in the population at least 60 days prior to population date. Percentages may not add to totals due to rounding.

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

[30] *See* NC Sentencing and Policy Advisory Commission, *Justice Reinvestment Implementation Evaluation Report*, 2013, for a more detailed description of these instruments.

An offender's supervision level is determined based on the intersection of the offender's level of risk and level of need. There are five supervision levels, with Level 1 being the highest. Table 3 shows the distribution of probationers by risk, needs, and supervision level. Overall, 9.0% of offenders were assessed in Supervision Level 1, 30.6% were in Level 2, 29.5% were in Level 3, 26.2% were in Level 4, and 4.6% were in Level 5 (*see* also Figure 1).[31] An offender's supervision level determines the minimum contact requirements for supervision.

Figure 1:
Supervision Level
Assessed Probation Population on December 31, 2013



Note: Percentages may not add to 100% due to rounding.

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Responses to Probation Violations

The JRA made substantial changes to the responses to probation violations in terms of confinement, with changes effective for violations of probation occurring on or after December 1, 2011. With the JRA, revocation and activation of the suspended sentence may only occur for those who abscond supervision or commit a new crime. A CRV may be imposed for technical violations of probation, with revocation possible only after the imposition of two prior CRVs. Felons who receive a CRV are housed in the state prison system, while misdemeanants are housed in either the state prison system or in local jail facilities depending on their sentence length.[32] However, because there is no statewide automated jail data system, information on the

[31] The Supervision Level distribution for Table 3 is based on the DACJJ's RNA process. Additional risk assessments are completed for sex offenders and DWI offenders that may result in supervision at a higher level than indicated by the RNA.

[32] Under current law, a defendant who is convicted of a misdemeanor offense and sentenced under Structured Sentencing with a sentence imposed of up to 180 days is required to serve the period of confinement in a local

impact of CRVs on the jail populations is unknown.[33] Short of revocation or the imposition of a CRV, quick dip confinement was also added as a tool for responding to probation violations.

These changes have affected exits from probation. With the legal limits placed on revocations described above, probation exits due to revocation have decreased substantially. As shown in Table 4, 25% of felony exits from probation in CY 2013 were for revocation compared to 28% in CY 2012 and 40% in CY 2011 – an overall decrease of nearly 38% since CY 2011. Misdemeanor exits from probation due to revocation have decreased by about 49% from CY 2011 to CY 2013.

Table 4
Exits of Probation Resulting from Revocation by Calendar Year

Offense Type	Revocation Exits		
	CY 2011	CY 2012	CY 2013
Felony	40%	28%	25%
Misdemeanor	37%	23%	19%
Total	**38%**	**24%**	**20%**

SOURCE: Automated System Query (ASQ), Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Felony Prison Entries[34]

Table 5 summarizes felony probation violation entries to prison during CY 2013. Overall, there were 7,248 entries due to probation violation. The majority (31%) resulted from imposition of a CRV, followed closely by absconding supervision (30%). There were no entries for revocation following the imposition of two prior CRVs. The number of entries for pre-JRA technical revocation (4%) should continue to decrease. Data for entries categorized as JRA technical revocation (14%) will continue to be examined. It is not clear whether these data reflect actual practices or are related to how information was initially captured in OPUS. These entries should decrease as implementation of the JRA continues.

confinement facility – those with sentences of more than 90 days and up to 180 days serve their confinement in a local confinement facility through the Statewide Misdemeanant Confinement Program.

[33] Data are available from the NC Sheriff's Association for the Statewide Misdemeanant Confinement Program; however, these data represent only a small portion of the state's jail population.

[34] This section focuses only on felony prison entries and exits since the majority of misdemeanants serve their sentences in local jail facilities. Misdemeanants sentenced under the Structured Sentencing Act comprised 1% of the prison population on December 31, 2013.

Table 5
Felony Entries to Prison for Probation Violations by Type
CY 2013

Type of Prison Entry		Felony Entries to Prison	
		#	%
New Crime		1,505	21
JRA	**Technical**	1,036	14
	CRV	2,253	31
	Revoked after 2 CRVs	0	0
	Absconding	2,163	30
Pre-JRA	**Technical**	291	4
	Total	**7,248**	**100**

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Probation Dispositions: Confinement in Response to Violation

Probation data for CY 2013 indicate a total of 8,921 CRV dispositions ordered as a result of probation violation hearings – 3,025 for felons and 5,896 for misdemeanants. Overall, the majority of CRV dispositions (97% or n=8,644) were for offenders with a single CRV disposition.

Table 6 provides information on preliminary revocation outcomes for the CRV dispositions ordered in CY 2013. As of February 8, 2014, 35% had no subsequent revocation, 14% were terminated from probation following the CRV, 7% had a subsequent revocation for a non-technical violation (*i.e.*, new crime or absconding), and 44% had a revocation for a technical violation.

ASQ provides some additional information regarding "CRV and terminate." In CY 2013 there were 4,217 probation exits with an exit reason that indicated that a CRV was imposed and that probation was terminated after the CRV period was served. Of these, 3,732 (89%) were for misdemeanor probation exits and 483 (11%) were for felony probation exits, representing about 9% of misdemeanor exits and 3% of felony exits from probation. For CY 2013 data, the data collected in OPUS do not distinguish between instances in which serving the CRV period uses up all of the time on the suspended sentence and probation is terminated or instances in which the sentence is modified and probation is terminated following the CRV period. Modifications have been made to OPUS to attempt to capture this information.

Table 6
Offenders with CRV Dispositions: Number of CRVs and Revocation Outcomes
CY 2013

Revocation Outcomes (as of February 8, 2014)	Number of CRVs				Total	
	One (1)		Two or More (2+)			
	#	%	#	%	#	%
No Revocation	3,001	35	124	45	3,125	35
CRV & Terminate	1,263	14	38	14	1,301	14
Revoked: Non-Technical	580	7	27	9	607	7
Revoked: Technical	3,800	44	88	32	3,888	44
Total	**8,644**	**100**	**277**	**100**	**8,921**	**100**

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

On December 31, 2013, there were 335 felons and 74 misdemeanants in prison for probation CRV periods, accounting for about 1% of the total prison population. It is important to remember that the misdemeanor CRV entries to prison are only representative of misdemeanants with sentence lengths of 181 days or greater. Misdemeanants with sentence lengths of 180 days or less serve their sentences in local jails.

Quick Dip Confinement

Quick dips were added as a tool to be used in response to probation violations. They were designed to be an immediate response to offender non-compliance. By DPS policy, eligible offenders for quick dip confinements are those supervised in Supervision Levels 1, 2, and 3 – offenders with the highest levels of supervision. Table 7 provides information on quick dips approved for use by probation officers in CY 2013. Overall, 699 quick dips were approved for a total of 636 offenders. Nearly two-thirds of quick dips were for 3-day periods. The majority of quick dips were for offenders supervised in Supervision Levels 2 and 3 (39% and 42% respectively). A subsequent violation process (as of February 8, 2014) was reported for 57% (n=396) of the 699 quick dips. The average time to subsequent violation process was 81 days.

Table 7
Quick Dips by Supervision Level
CY 2013

Supervision Level	Quick Dips Approved				Total	
	2 Days Ordered		3 Days Ordered			
	#	%	#	%	#	%
Level 0 (Not Established)	2	1	4	1	6	1
Level 1	30	11	84	19	114	16
Level 2	99	37	174	41	273	39
Level 3	128	47	164	38	292	42
Level 4	10	4	4	1	14	2
Level 5	0	0	0	0	0	0
Total	**269**	**38**	**430**	**62**	**699**	**100**

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Treatment for Effective Community Supervision

The TECS program went into effect on July 1, 2011, but was delayed to allow DPS adequate time to develop requirements for participation. DPS began awarding contracts for qualifying vendors in August 2012, with services to begin on October 3, 2012. CY 2013 represents the first full year of operation of the TECS program. Data from DPS indicate that on December 31, 2013, the TECS population of 2,091 included 1,867 offenders on probation, 89 offenders on PRS, 40 offenders on dual supervision for probation and PRS, and 95 offenders in G.S. 90-96 mandatory drug diversion programs. The TECS population has nearly doubled from the December 31, 2012, population of 1,055.

Post-Sentencing – Post-Release Supervision[35]

The JRA mandated 9 months of PRS for Class F-I felons and lengthened the period of PRS for Class B1-E felons from 9 months to 12 months.[36] The addition of PRS for Class F- I felons is expected to have a significant impact on community corrections resources. On December 31, 2013, the community corrections population included 6,679 offenders on PRS.

[35] There are multiple methodologies available to examine the PRS population using ASQ. The data for this report is based on having a value of "Post-Release" for "Punishment Type."
[36] These changes are effective for offenses committed on or after December 1, 2011. Consequently, the PRS population will include pre-JRA prisoners for years to come.

Expansion of Post-Release Supervision

Prior to the passage of the JRA, Class F-I felons were released from prison without PRS. As a result of the expansion of PRS to Class F-I felons, the number of offenders released from prison onto PRS and the population of offenders supervised on PRS have increased substantially (*see* Table 8). PRS entries and the PRS population for 2013 were nearly 2.5 times the size of the 2011 entries and population. From CY 2012 to CY 2013, the number of Class B1-E entries to PRS remained stable (2,896 and 2,905 respectively). The number of Class F-I entries increased from 534 to 3,526. A similar pattern is found when comparing the December 31 population from year to year.

The increase in the PRS population has also led to an increase in entries to prison as a result of violations of supervision, with much of the increase attributable to revocations for Class F-I felons with PRS. Table 9 summarizes PRS violation entries to prison. It is expected that this distribution will change further due to the volume of Class F-I offenders placed on PRS under the JRA. PRS violation entries to prison for Class F-I felons under JRA outnumber the entries for pre-JRA felons (a total of 52% compared to 34% respectively). Data for entries categorized as JRA technical revocations (16%) will continue to be examined. It is not clear whether these data reflect actual practices or are related to how information was initially captured in OPUS. It is expected that entries in this category will decrease as implementation continues.

The changes have also affected exits from PRS. In CY 2013, 25% of exits from PRS were for revocation compared to 17% in CY 2012 – an increase of 47%. As expected, exits due to revocation have increased with the addition of PRS for Class F-I felons. Class F-I felons represented 48% of revocation exits in CY 2013 compared to only 2% in CY 2012, due to the limited number of Class F-I offenders placed on PRS in CY 2012 (*see* Table 8).

Post-Sentencing – Statewide Misdemeanant Confinement Program

The JRA requires that most Structured Sentencing misdemeanants serve their active sentence in jail rather than prison through the establishment of the SMCP for misdemeanants sentenced to 91 to 180 days of confinement. Misdemeanants sentenced to more than 180 days of confinement continue to be housed in the state prison system.

Statewide Misdemeanant Confinement Program and Misdemeanants in Prison

The NCSA annual report on the SMCP indicates an average daily population of 659 inmates in the SMCP for CY 2013, with 2,945 entries over the course of the year.[37] Also, the NCSA reported receiving 224 CRV inmates in CY 2013 with an average sentence length of 72 days.

[37] *See* North Carolina Sheriffs' Association *Statewide Misdemeanant Confinement Program Annual Report January 1-December 31, 2013*.

Table 8
Post-Release Supervision Entries and Population by Offense Class

Post-Release Supervision Entries						
Offense Class	**CY 2011**		**CY 2012**		**CY 2013**	
	#	**%**	**#**	**%**	**#**	**%**
Class B1 – E	2,544	100	2,896	84	2,905	45
Class F – I	0	0	534	16	3,526	55
Safekeepers/Non-Class Code	0	0	2	0	28	0
Total	**2,544**	**100**	**3,432**	**100**	**6,459**	**100**
Post-Release Supervision Population						
Offense Class	**12/31/2011**		**12/31/2012**		**12/31/2013**	
	#	**%**	**#**	**%**	**#**	**%**
Class B1 – E	2,797	100	3,138	85	3,304	50
Class F – I	0	0	561	15	3,354	50
Safekeepers/Non-Class Code	0	0	2	0	21	0
Total	**2,797**	**100**	**3,701**	**100**	**6,679**	**100**

SOURCE: Automated System Query (ASQ), Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Table 9
Felony Entries to Prison for PRS Violations by Type
CY 2013

Type of Prison Entry		**Felony Entries to Prison**	
		#	**%**
New Crime		193	14
JRA	**Technical**	219	16
	90-day Confinement	148	11
	Absconding	331	25
Pre-JRA	**Technical**	452	34
	Total	**1,343**	**100**

SOURCE: Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

As a result of the statutory change regarding the confinement location for misdemeanants and the establishment of the SMCP, the number of misdemeanants in the state prison system has decreased. Overall, the percentage of misdemeanants in prison has dropped from 3% to 1%. On December 31, 2013, there were 333 misdemeanants (excluding DWIs) in prison compared to 1,166 on December 31, 2011 – just prior to the date the SMCP went into operation on January 1, 2012. Correspondingly, the number of misdemeanor prison entries and releases has decreased substantially. For example, misdemeanor prison entries have decreased 84% comparing CY 2011 entries (6,359) to CY 2013 entries (997).

Effect of Justice Reinvestment on the Community Corrections and Prison Populations

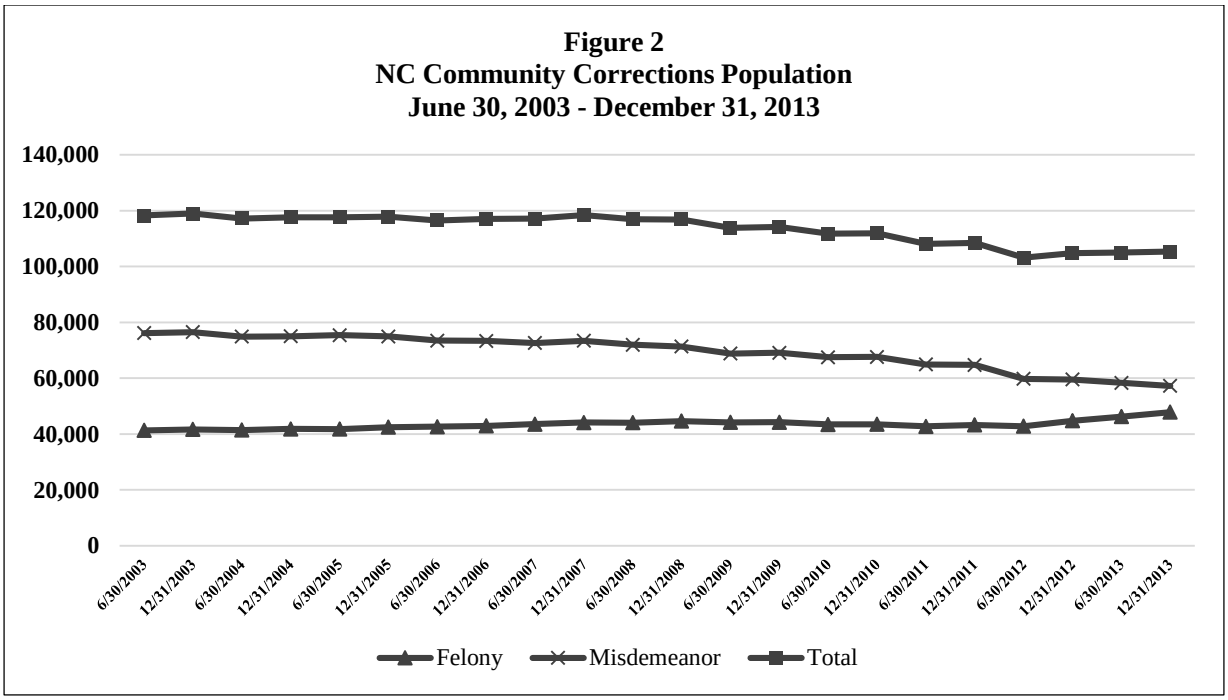
Figure 2 and Figure 3 provide trend data on the community corrections population and the prison population, respectively, in order to examine the effect of the JRA on these populations. While both populations have been affected by declines in criminal justice trend indicators (such as arrests and convictions) over the past few years, the populations have also been affected by the changes that went into effect with the JRA beginning in December 2011.

From December 2011 to December 2013, the felony community corrections population increased nearly 11% (from 43,278 to 47,853). This increase primarily results from the addition of PRS for Class F-I felons. Over this same time period, the misdemeanor community corrections population decreased nearly 12% (from 64,762 to 57,244). This decrease is likely related to a continued decrease in misdemeanor convictions. However, the termination of probation for misdemeanants who have served a CRV could certainly impact this population as well. Overall, the community corrections population declined almost 3% from December 2011 to December 2013 (from 108,520 to 105,364), with the declines in the misdemeanor community corrections population as a major contributor.

The average prison population has declined from 39,954 in December 2011 to 37,468 in December 2013, a decrease of 2,486 or 6%. These declines can be attributed to changes in prison entries as a result of the JRA. While the intent of the JRA is to reduce the prison population by changing offender behavior, this initial decline resulted from two immediate changes: shifting most misdemeanants from prison to local jails through the establishment of the Statewide Misdemeanant Confinement Program and the legal change that placed limits on revocations of probation and established CRVs for technical violations of probation.

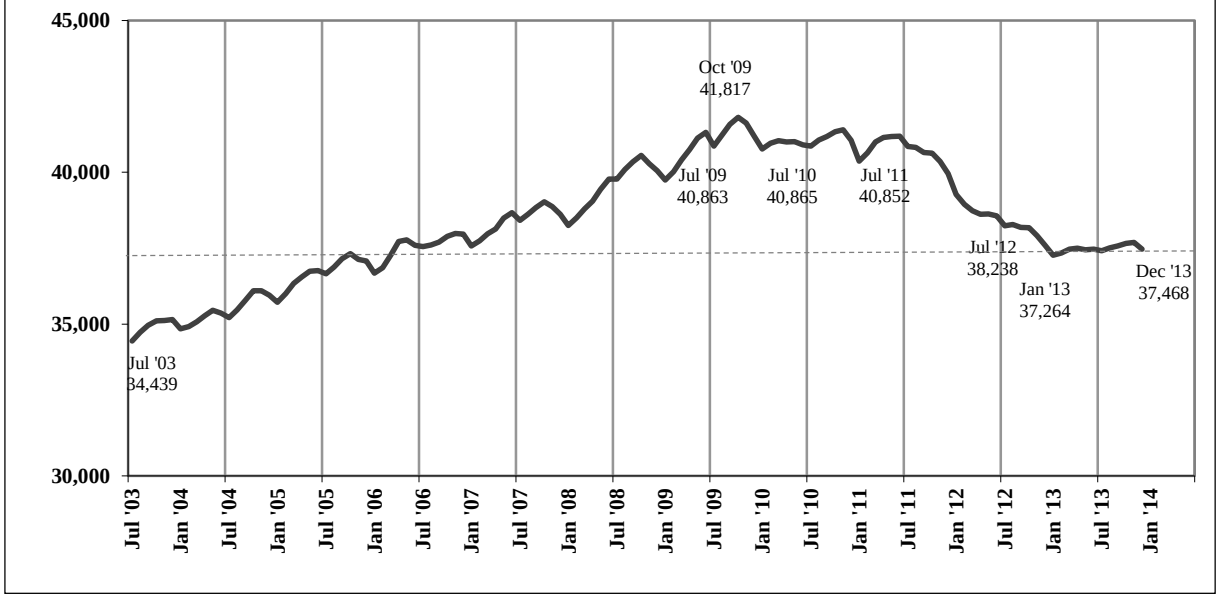
Changes in the community corrections population and the prison population will continue to be monitored, especially the impact of the PRS population on both community corrections (in terms of caseloads) and prison population (in terms of violations) and the effect of CRVs on the misdemeanor community corrections population.

Figure 2
NC Community Corrections Population
June 30, 2003 - December 31, 2013



SOURCE: Automated System Query (ASQ), Division of Adult Correction and Juvenile Justice, NC Department of Public Safety

Figure 3
NC Prison Population
Monthly Average: July 2003 - December 2013



Note: Vertical lines separate each fiscal year. The horizontal dashed line allows for a comparison of the current prison population with historical prison populations.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice, Daily Unit Population Reports and Inmates on Backlog Reports

VI. CONCLUSIONS

The wide sweep of the JRA impacted the entire span of the criminal justice system and included new legal provisions, altered correctional practices, and shifts in authority and discretion. Practices can be expected to emerge at all stages of the criminal justice process, not only to incorporate the new directives, but also to anticipate and respond to the expected actions of other players. As such, this report details refinements to agency policies, emerging practices based on interviews with field practitioners, and implementation data from CY 2013.

In the past calendar year, there have been few legislative changes made to the JRA and few instances of policy and procedure revisions made by agencies. This can be attributed to the expected process of implementing the legislation: agencies prepared for the changes after the law passed, put forth their policies and procedures after it took effect, and refined those policies and procedures after experiencing real-life scenarios that required adjustments. At this point in time, the bulk of implementation – policy and procedure development (and revisions where necessary), modifications to data management systems and data collection practices, and training – has either already occurred or has been subsumed into agencies' everyday work. Before making any further adjustments, more time adhering to the established policies and procedures is needed in addition to greater examination and understanding of practitioners' interpretation and use of the provisions of the JRA. With the continued settling of sentencing and correctional practices, additional information and empirical data will be able to inform policy or legislative decisions to modify (if and where needed) existing practices and/or current law.

The overarching goal of the JRA was to increase public safety, primarily through a behavioral change in offenders induced by quick reaction to technical violations (*e.g.*, quick dips and CRVs) and by various rehabilitative steps through targeted services and programming (*e.g.*, TECS, redefinition of Community and Intermediate punishments, ASR). While it remains too early to evaluate long-term outcomes of the JRA such as reduced recidivism, this report offers a first look at emerging practices based on interviews with practitioners in the field, which provides context for this report (and for future reports) to interpret empirical information.

Information obtained through site visit interviews across the state suggests the current stage of implementation can be defined by the creative use of some JRA provisions and modification of practices in light of the new tools and their by-products. Some creative uses of JRA provisions include the emergence of terminal CRVs for many misdemeanants and some felons in response to the JRA limits to revocations; the use of special probation in response to probation violations; and the pursuit of both habitual felon and habitual breaking and entering charges by prosecutors looking to secure either a favorable plea or a habitual status offense conviction. Modifications to practices include changes to plea offers to avoid probation and/or PRS; opposing ASR in almost every instance; and some greater specificity of conditions of probation in plea agreements and/or at sentencing in an effort to impact the post-sentencing phase. The field may continue to adjust practices based not only on its increasing familiarity with the decisions and practices of other actors in the system, but also in response to increased or decreased confidence in existing policies and programs.

Some of these emerging practices may result in unanticipated savings that conflict with some of the primary goals of the JRA. For example, terminal CRVs could reduce the population on supervised probation, resulting in savings, but in potential conflict with the goal of rehabilitating offenders through continued supervision in the community. Another possible tension between correctional savings and legislative intent is the application of CRV credit to consecutive sentences. While this has the potential to reduce the length of some active sentences upon revocation and save prison beds, it may conflict again with the possibility of offender rehabilitation and accountability envisioned by the legislation. Other JRA practices and provisions (*e.g.*, ASR, delegated authority, TECS) are having little impact at this stage for a variety of reasons, including unclear target population, delayed implementation, and/or resource availability. Whether any of these unexpected, early effects of the implementation of the JRA will require any legislation or policy adjustment will depend on whether practices continue to shift and change further as time progresses.

Limited resources in the community remain a challenge, as reported by the field. The success of the JRA depends, to a large extent, on whether resources match the needs of the offender population and whether those resources are effective in eliciting positive change in offender behavior. Feedback from practitioners in both courts and probation offices indicates widespread concern regarding the availability, accessibility, and quality of current resources. Most interviewees noted challenges related to resource availability and accessibility (*e.g.*, limited mental health and substance abuse services, limited programming for CRV offenders in prisons and jails, difficulties with referrals to TECS) and also raised questions about program and policy efficacy (*e.g.*, potential for quick dips and/or CRVs to elicit behavioral change in offenders, identifying appropriate candidates for graduated sanctions). These resource limits have a direct and often immediate impact on caseload management for probation officers and may have a long-term impact on the JRA's ability to achieve its goals of rehabilitation and reduced recidivism.

The implementation data included in this report from CY 2013 offers a first look at the changes in the criminal justice system – particularly to sentencing and post-sentencing practices – brought forth by the new law. This first full calendar year of empirical data would suggest some anticipated effects of the JRA have been realized at this stage (*e.g.,* decline in revocations of probation), while other effects will continue to be monitored over time (*e.g.,* the effect of the JRA on certain outcomes such as recidivism, effectiveness of new tools in rehabilitating offenders, impact on the prison population and/or community supervision population). It is important to recognize that these data only reflect evolving JRA practices during the early stages of implementation. The first wave of cases under any new sentencing scheme is not necessarily representative of the practices that will occur in the future, after the field has learned and used the new tools and options available and has become more comfortable with the provisions under the new law. In addition, it will take time for the cases processed under the new law to encompass the later-date provisions and the more slowly moving serious cases in the system. It is important to recognize that during the time period being examined, field practitioners were learning to use the new tools under the JRA, as well as how to capture that information in automated systems. Changes in the community corrections population and the prison population will continue to be monitored, especially the impact of the PRS population on both community

corrections (in terms of caseloads) and prison population (in terms of violations) and the effect of CRVs on the misdemeanor community corrections population.

To fully measure the impact of the JRA and emerging sentencing and correctional practices, the collection of empirical data is critical. Data will allow for the continued examination of the use of new tools available under the JRA and the analysis of the impact of those tools on outcome measures such as prison utilization and recidivism. The development of a statewide automated data system for jails is another critical component in measuring the impact of the JRA. Without both agency data and statewide jail data, the examination of the full impact of the JRA on the criminal justice system in North Carolina will be incomplete.

One of the more difficult aspects of the JRA to monitor is the savings reinvested due to the changes under the law. The JRA's purpose was to save correctional resources by limiting the use of prisons in certain circumstances and reducing recidivism while continually reinvesting those savings into programs. To date, DPS has closed some prisons as a result of the legislation, but if, to what extent, and for what purpose those savings have been reinvested is unclear. The Sentencing Commission's Justice Reinvestment Implementation Report Subcommittee expressed concerns about effective ways to track not only the monies saved by JRA provisions, policies, and/or outcomes, but also how those savings are being reinvested. An effective way to monitor savings and the reinvestment of funds into programming is a critical component to measuring the JRA's success.

An additional aspect of the JRA that is important to its success is the CRV. While emerging practices and feedback from the field indicate the CRV is viewed at this stage of implementation as primarily a sanction/punishment option, DACJJ intends to realize its purpose as a rehabilitative tool. DPS continues to explore options for both the felony and misdemeanor CRV populations with the goal of providing appropriate programming to help offenders successfully complete probation. The results the DACJJ is able to achieve with these populations of offenders will be an important factor in not only persuading the field of the ability of the CRV to change offender behavior but also in eliciting the cost savings the CRV was designed to produce. While the underlying goals of the CRV are supported by the Justice Reinvestment Implementation Report Subcommittee, members expressed concerns about programming feasibility and effectiveness – particularly for the misdemeanant CRV population. During the next year, the Subcommittee will examine legal, practical, and programmatic issues surrounding CRVs for both felons and misdemeanants.

The Sentencing Commission's Justice Reinvestment Implementation Report Subcommittee will continue to meet and monitor the progress of the implementation, review data where available, and submit future annual reports, interim findings, and recommendations for clarifications or revisions to the JRA as needed to specifically address issues noted in this report.

APPENDIX A
FIELD VISIT PROTOCOL

NORTH CAROLINA
SENTENCING AND POLICY ADVISORY COMMISSION

Field Visit Protocol

2014 Correctional Program Evaluation Report
2014 Justice Reinvestment Act Implementation Evaluation Report

Introduction/Purpose

The Sentencing Commission is required by statute to submit an annual report to the state legislature evaluating the implementation of the JRA. In its current stage, provisions of the legislation have been fully implemented, but available empirical data are insufficient yet to offer a representative picture of sentencing and correctional practices under the new law.

Generally, it is important in evaluating the impact of any legislation, to understand not only the intent of the law, but its application. Field practitioners have been using the provisions of the JRA since 2011, and their perspective offered at this stage provides context, through an insight into emerging practices, to interpret the empirical information.

Information obtained from interviews with practitioners will enrich not only the current JRA Implementation Evaluation Report, but other legislatively-mandated Commission reports including the 2014 Correctional Program Evaluation, the 2014 Structured Sentencing Statistical Report for Felonies and Misdemeanors, and the 2014 Prison Population Projections.

Court Personnel
District Attorneys, Public Defenders, District Court and Superior Court Judges

Pre-Sentencing Phase

1. Describe the effect, if any, the Justice Reinvestment Act has on the following:
    a. Charges
    b. Plea bargains
        i. Do any new components (e.g., changes to Habitual Felon law, new Habitual felon status for breaking and entering offenses, Advanced Supervised Release, etc.) of the JRA affect the plea bargaining phase? If so, how?
    c. Risk Needs Assessment performed by probation

Sentencing Phase

1. Describe the effect, if any, the Justice Reinvestment has on sentences imposed.
    a. Have changes to the Community/Intermediate punishment blocks affected the sentences imposed in your jurisdiction?
        i. Why impose a C vs. an I (probation supervision length?)?
        ii. More or less likely to give an active sentence – why?
        iii. More or less likely to specify conditions of probation?

b. More or less likely to delegate authority? Are there scenarios where you do not delegate authority? If so, why?
c. Does the expansion of Post-Release Supervision have an impact on the sentencing phase?
d. Are any quick dips/short term jail confinement being imposed by judges at sentencing?
e. Describe the use of ASR in your district.
    i. Frequency of prosecutor objections
    ii. Frequency judges do not sentence to ASR when prosecutor does not object.
f. Judges more/less/equally likely to accept pleas since JRA went into effect?
g. Who is responsible for calculating credit for time served (at sentencing and post-sentencing)?

Post-Sentencing

1. Describe the use of quick dips in your district.
2. Describe the Confinement in Response to Violation process and differences in the CRV process for felons and misdemeanants.
3. Describe the revocation process.
    a. How have the changes to the court's ability to revoke probationers from their suspended sentences affected the revocation process?
    b. How have these changes affected revocations in your district?
    c. What changes have you seen in the Post-Release Supervision revocation process?

General – Other issues

1. Other unique issues related to JRA implementation you have come across?

Probation Offices
Chief Probation and Parole Officers, Probation and Parole Officers

Chief Probation Officers

General

1. Describe your current caseload and staffing levels. Describe goals for staffing related to caseloads.
2. Describe training opportunities available for supervisors, probation and parole officers (PPOs), and new PPOs.

Probation/Post-Release Supervision Policies

1. Describe office policies related to the Justice Reinvestment Act (JRA), specifically: delegated authority, quick dips, confinement in response to violations (CRVs).
2. Describe any policies related to the supervision of offenders on post-release supervision (particularly the new population of lower-level felons being supervised). What effect has the expansion of post-release supervision (PRS) had on caseloads?
3. Describe office policies related to the assessment and reassessment of offender risk and/or needs.

Resources and Case Management

1. Describe the availability of evidence-based programs, services, or other resources in your district.
2. Does (and if so, how does) availability of programming factor into case management and planning?
3. What is the relationship between the local probation office and local providers?
4. What is the relationship between the local probation office and the Post-Release Supervision and Parole Commission?

Probation/Parole Officers

General

1. How and when are probationers and/or post-release supervisees assigned to your caseload?
2. Do you or any PPOs in your office have specialization in certain types of probationers/offenders

Case Management

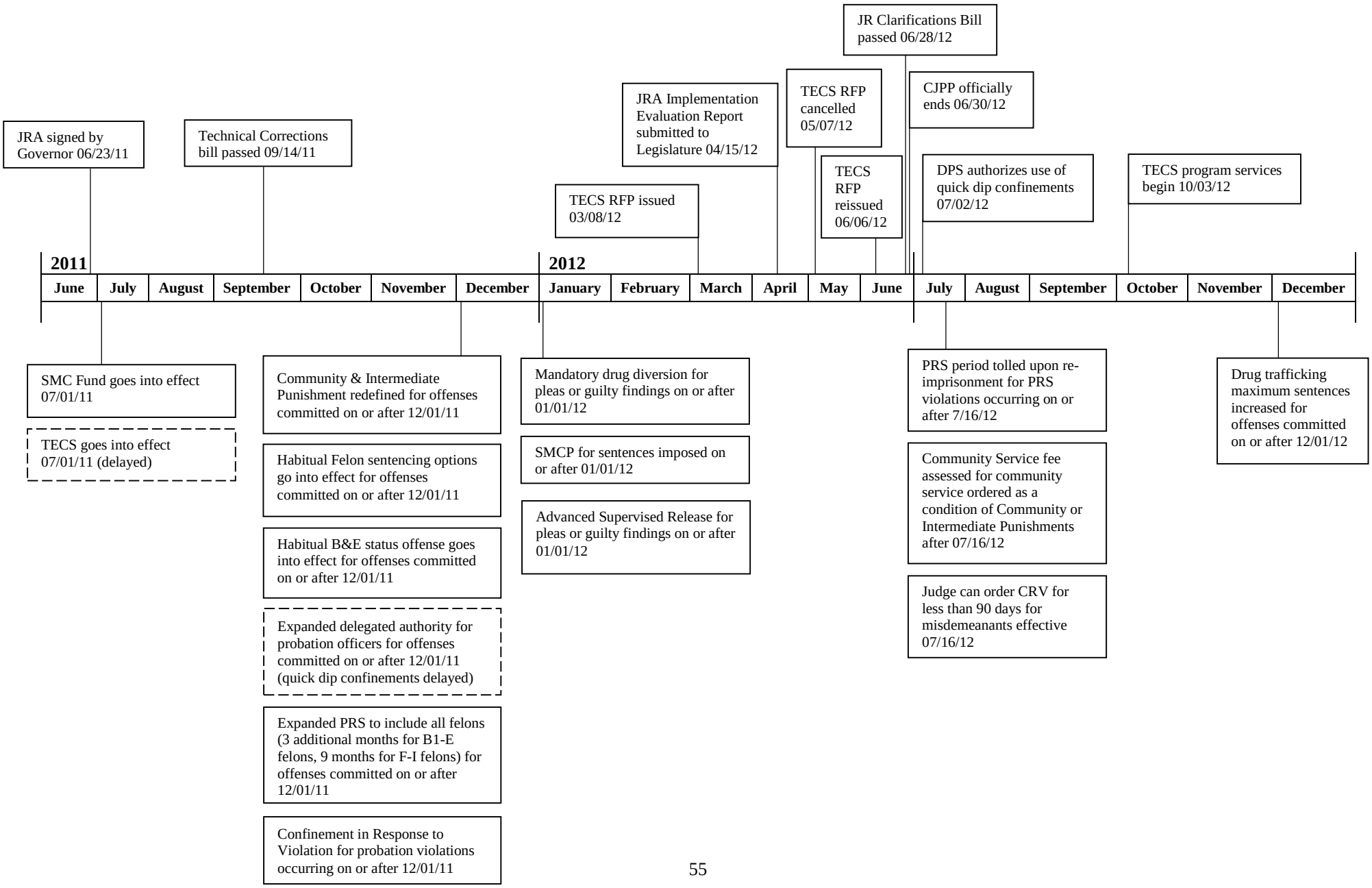
1. Describe the initial supervision period (prior to the completion of the Risk Needs Assessment).
2. Describe the Risk Needs Assessment in terms of officer responsibilities and the administration of the assessment.
3. Describe how the assessment feeds into both the Supervision Level and Case Plan for probationers on your caseload.
4. How do you determine appropriate programs and services for offenders on your caseload? Describe the availability of programming in your county or judicial district. How do you refer offenders to available programs?
5. How frequently are probationers' risk and/or needs reassessed? Describe the impact program participation and/or the use of delegated authority have on the Risk Needs Assessment and/or changes to Supervision Level.

Violation/Revocation Process

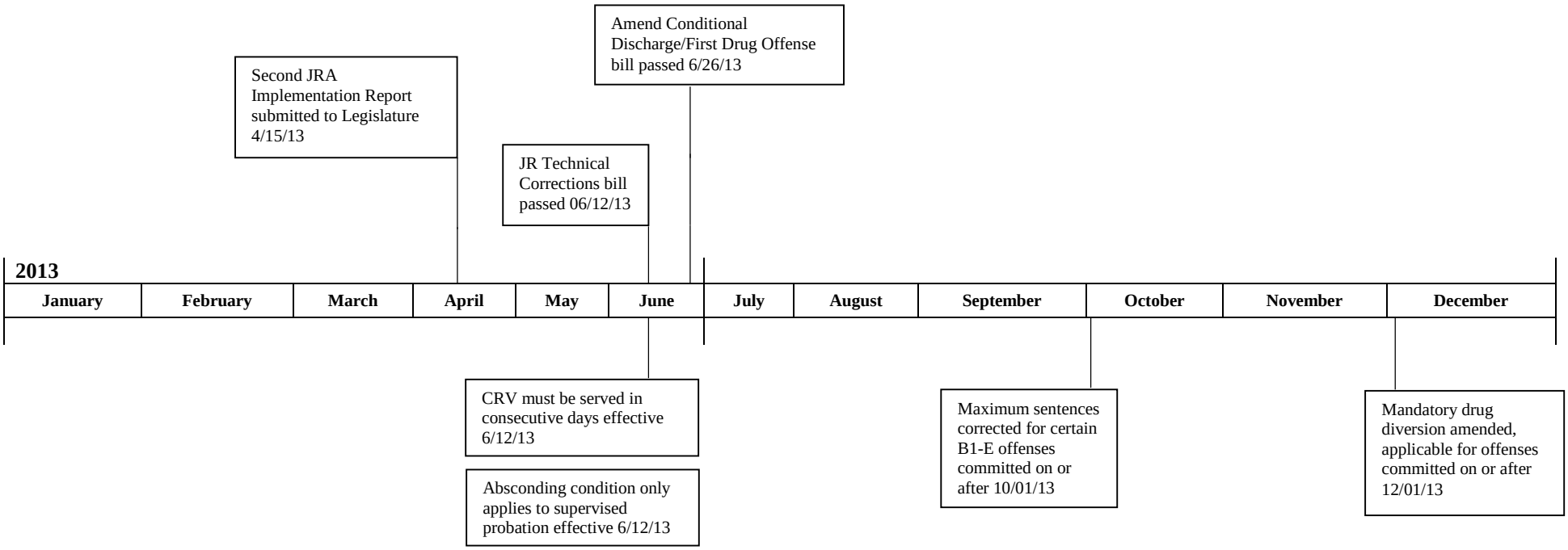
1. Describe how you respond to violations of probation. Do judges delegate/not delegate authority? Difference from before JRA? With what frequency do you initiate quick dips and recommend CRVs, probation revocations for new crimes or absconding, and terminal CRVs?
2. Describe how you respond to violations of PRS. With what frequency do you recommend 90-day periods of confinement for violations?
3. What are the differences in the revocation process for offenders on PRS compared to probationers?

APPENDIX B
JUSTICE REINVESTMENT IMPLEMENTATION TIMELINE

JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2011-2012



JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2013



APPENDIX C
LIST OF ACRONYMS

2014 Justice Reinvestment Implementation Evaluation Report
List of Acronyms

AOC	Administrative Office of the Courts
ASR	Advanced Supervised Release
ASQ	Advanced System Query
ADA	Assistant District Attorney
APD	Assistant Public Defender
ACIS	Automated Criminal Infraction System
ASQ	Automated System Query
CY	Calendar Year
CPPO	Chief Probation and Parole Officer
CBI	Cognitive-Based Intervention
CRV	Confinement in Response to Violation
CSG	Council of State Governments
CCIS	Criminal Case Information System
CJPP	Criminal Justice Partnership Program
DPS	Department of Public Safety
DA	District Attorney
DACJJ	Division of Adult Correction and Juvenile Justice
FY	Fiscal Year
G.S.	General Statute
ISP	Intensive Supervised Probation
JRA	Justice Reinvestment Act
MIS	Management Information System
NCSA	North Carolina Sheriffs' Association
OPUS	Offender Population Unified System
OTI	Offender Traits Inventory
OTI-R	Offender Traits Inventory - Revised
PRS	Post-Release Supervision
PRSP Commission	Post-Release Supervision and Parole Commission

2014 Justice Reinvestment Implementation Evaluation Report
List of Acronyms (continued)

PRL	Prior Record Level
PPO	Probation and Parole Officer
PIMS	Program Information Management System
PD	Public Defender
“Quick dips"	Quick Dip Confinements
RFP	Request for Proposals
RNA	Risk Need Assessment
"Adult and Juvenile Facilities"	Section of Adult and Juvenile Facilities
"Community Supervision"	Section of Community Supervision
S.L.	Session Law
SMC Fund	Statewide Misdemeanant Confinement Fund
SMCP	Statewide Misdemeanant Confinement Program
SL	Supervision Level
TASC	Treatment Accountability for Safer Communities