The DA and his Assistant DAs frequently receive questions from law enforcement and other members of the community about sentencing law. The North Carolina General Assembly recently passed some new legislation that will substantially alter sentencing and correction laws presently in effect. Due to these recent changes, effective for all offenses committed on or after December 1, 2011, we are providing this synopsis along with a link to the entire bill: House Bill 642.

Nothing in this document is intended as legal advice; this document is not a comprehensive summary of the law as it is now or as it will be under the new legislation; generalizations are made, when necessary, to communicate how a majority of cases must be handled under the new legislation.

Substantial Change #1: Most habitual felons must be given shorter sentences

Background

In NC, felonies are classified as Class A, B, C, D, E, F, G, H, and I; a Class A felony (e.g. first-degree murder) receives the toughest punishment, and Class I felonies (e.g. breaking or entering a motor vehicle; possession of heroin/cocaine) receive the least serious punishments. Currently, one who qualifies under N.C.G.S. 14-7.1 as a "habitual felon" is subject to punishment as a Class C felon, even if the newest offense they committed was some lower felony. Essentially, their punishment is elevated to Class C punishment if the State can prove their habitual felon status under NC law. Thus, someone convicted by the State for the Class I felony of Breaking or Entering a Motor Vehicle and of being a Habitual Felon under N.C.G.S. 14-7.1 would be punished as a Class C instead of a Class I (guaranteeing an active prison sentence).

New Law

Under the newest provisions of House Bill 642, beginning December 1, 2011, persons who commit a new felony and are also proven to be habitual felons under N.C.G.S. 14-7.1, will no longer be sentenced at the Class C level; rather, they will be sentenced four classes higher than their newest felony offense class, but never to exceed Class C. As a result, in the example provided in the above paragraph, the individual would be sentenced as a Class E felon instead of as a Class C felon. The difference can mean probation instead of prison, or, even if an active prison sentence is imposed, it would be a substantially lower term of incarceration than the law currently permits for habitual felons.

Substantial Change #2: All felons will have a period of post-release supervision

Background

Currently, felons sentenced for Class B1-E felonies receive a period of post-release supervision after serving their minimum imposed prison sentence. Post-release supervision involves the defendant being supervised by the Department of Correction (DOC); violations of post-release terms result in the defendant going before a DOC commission that has the authority to revoke their post-release supervision and re-incarcerate the defendant up until the maximum imposed prison sentence. For example, a defendant may receive a sentence today as a Class E felon for 50-69 months. The defendant *must* serve 50 months in prison. The defendant *may* serve up to

60 months, depending on their behavior and participation in rehabilitation programs while incarcerated. The final 9 months would be a period of post-release supervision.

New Law

Under the new legislation, all felons, including those sentenced for the lowest possible felony offenses – Class I offenses – will serve a period of post-release supervision. Thus, while a Class I felon might presently receive a sentence of 6-8 months in prison, the new sentence would be for a term of 6-17 months in prison. The defendant must still serve the minimum 6 months, may serve up to 8 months depending on behavior and participation in rehabilitation programs, but will be on post-release supervision for the final 9 months. Ultimately, these changes to post-release supervision will not reduce the time offenders spend in prison.

Substantial Change #3: Four state prisons will be closed; no new prisons will be opened.

The Department of Correction must close four prisons. Note: this specific provision is not found in House Bill 642; it is found in separate legislation.

Substantial Change #4: Creation of a "habitual breaking and entering status offender"

Background

Presently, felony breaking or entering is classified by the legislature as the second-lowest felony: Class H. In order for an individual to receive any higher punishment, he or she must be a habitual felon under N.C.G.S. 14-7.1. This means that someone can repeatedly break into homes and businesses and not be sentenced at a level higher than a Class H felon until they have acquired quite a lengthy record over a long period of time.

New Law

If an individual commits a felony breaking or entering, is convicted of said felony and sentenced as a Class H felon as required, then upon the commission and subsequent conviction of a second breaking or entering, the individual can be punished as a Class E felon. Once in effect, this should permit active prison sentences for most repeat offenders that commit the specific offense of breaking into houses and businesses.

Substantial Change #5: Judges can no longer revoke a defendant's probation and send them to prison for most violations of probation

Background

Presently, a judge can revoke probation upon a finding that the defendant willfully violated a condition of probation. Revoking probation means the suspended sentence is activated; for example, if a defendant is given the following sentence: "6-8 months, suspended, 24 months of supervised probation," then he must follow a long list of conditions of probation as prescribed by statute and the judge. If the defendant fails to comply during the 24-month probation term, the judge may revoke his probationary status and send him to prison for 6-8 months.

New Law

Using the above example, a judge may not revoke the defendant's probation and activate his sentence of 6-8 months unless his violation is for committing a new criminal offense and/or absconding supervision. Thus, violations of other conditions such as failing to remain employed, failing to pay court costs, fines, and restitution to victims, failing to complete treatment, failing drug tests, and more, cannot result in revocation of probation; instead, judges must give shorter jail sentences in response to these types of violations and then allow the defendant to continue on probation. Once a judge has found the defendant in violation twice before, they have the option of revoking the defendant's probation after a third probation violation hearing.

There are many other changes and details to North Carolina sentencing and corrections that are made by the recent legislation. You are encouraged to read House Bill 642 for complete information; it is merely the intent of the DA to inform interested citizens of those issues about which his Office frequently receives questions.

The sentencing laws of the State of North Carolina are determined by the General Assembly (not local governments, judges, or district attorneys) and apply to the entire state.