

Revised Drug Trafficking Chart

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I mentioned in [this prior post](#) that the 2012 Justice Reinvestment clarifications act, [S.L. 2012-188](#), made changes related to drug trafficking. Specifically, the law amended G.S. [15A-1368.1](#) to make clear that the post-release supervision law applies to drug trafficking sentences and added time onto the maximum sentences for those offenses accordingly. In response to the changes I prepared a revised drug trafficking sentencing chart. It is available [here](#).

The 2012 changes to the law were made effective for offenses committed on or after December 1, 2012. Going forward, it is clear the drug trafficking sentences for crimes occurring on or after that date receive post-release supervision (PRS) just like any Structured Sentencing felony: 12 months of PRS for Class B1–E trafficking, 9 months of PRS for Class F–I trafficking.

The changes do not, however, answer the question of how PRS applies (if at all) for trafficking offenses committed before December 1, 2012. Before it was amended, G.S. 15A-1368.1 said that PRS applied to “all felons sentenced to an active punishment under Article 81B.” [Article 81B](#) of Chapter 15A is Structured Sentencing. Some would say that drug trafficking crimes are not sentenced under Structured Sentencing. They are instead sentenced under [G.S. 90-95\(h\)](#), and thus PRS does not apply. I think there are at least two problems with that view.

First, the statute setting out the applicability of Structured Sentencing, [G.S. 15A-1340.10](#), says that it applies to criminal offenses other than impaired driving and certain health control measures. In other words, certain crimes are expressly excluded from Structured Sentencing, but drug trafficking is not among the exclusions. If that statute controls, drug trafficking crimes fall under Structured Sentencing generally, but just happen to have an alternative punishment set out in G.S. 90-95(h)—a possibility expressly provided for within Structured Sentencing itself. [G.S. 15A-1340.17\(d\)](#) (“Unless provided otherwise in a statute establishing a punishment for a specific crime, [punishment] is as specified in the [sentencing grid] . . .”).

Second, maximum sentences for class C, D, and E trafficking offenses have long been 120% of the minimum *plus 9 months*, indicating an expectation that they would, like other Class B1–E felons from that timeframe, be released onto PRS nine months before attaining their maximum. And as a practical matter, the prison system has always released those offenders onto PRS like other serious felons.

So, there were at least a few indications that PRS *did* apply to drug trafficking sentences.

That was all well and good until the Justice Reinvestment Act (JRA) expanded post-release supervision without increasing the maximum sentences for trafficking. That expansion gave rise to a statutory conflict: revised [G.S. 15A-1368.2\(a\)](#) commands a release from prison onto PRS before some inmates have a chance to serve their minimum as required by [G.S. 15A-1340.13\(d\)](#). The problem is most obvious with low-level traffickers. For example, a Class H trafficker who receives a 25–30 month sentence would, at the very latest, be due for release onto PRS after serving 21 months (maybe earlier depending on earned time), but G.S. 15A-1340.13(d) says he may not be released from prison until serving his 25-month minimum.

So what do you do? The issue won't go away soon. It will persist as long as people are serving sentences for offenses

that occurred on or after December 1, 2011 (the effective date of the JRA's expanded PRS law), but before December 1, 2012 (the effective date of the clarifications act described above). How should sentences for cases in that "gap" be administered?

One possibility would be to give effect to as much of the law as possible and release the person onto PRS as soon as *both* the early release rule of G.S. 15A-1368.2(a) and the serve-the-minimum rule of G.S. 15A-1340.13(d) rule are satisfied. Applying that rule to the Class H trafficker described above, the inmate would be released from prison onto PRS as soon as he served his 25-month minimum. He would then be on post-release supervision for 9 months with the possibility of reimprisonment for the 5 months remaining on his sentence in the event of revocation (or less, depending on earned time). It's a little strange for the time hanging over the person's head not to match the period of supervised release, but not unprecedented. A similar thing happens with Class F-I sex offenders who are under supervision for 60 months with only 9 months time remaining on their maximum. And that's okay, because the supervision time is dictated by G.S. 15A-1368.2(c), not by the length of time remaining on the maximum sentence.

Other interpretations are also possible. I'll post an update if I learn more about how the statutory conflicts will be resolved. I imagine that some "gap" cases are being handled right now, and all parties have an interest in knowing how the sentence will be served.