

SENTENCING TO JAIL

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1. Place of confinement:

- a. If a misdemeanor is 90 days or less, the defendant must be committed to a local jail. If a misdemeanor sentence is greater than 90 days, the defendant may be sentenced to either state prison or a local jail. G.S. 15A-1352(a).
- b. Felony sentences must be served in state prison, unless a county's sheriff or board of county commissioners requests that the judge sentence the defendant to the local jail. G.S. 15A-1352(b).
- c. When the sentencing court, with the consent of the person sentenced, orders that a person convicted of a misdemeanor be granted work release, the court may commit the person to a specific prison facility or local confinement facility within the county of the sentencing court to facilitate the work release arrangement. Additionally, the sentencing court may, with the consent of the sheriff or board of commissioners, commit the person to a specific local confinement facility in another county, or, with the consent of the Department of Correction, commit the person to a specific prison facility in another county. G.S. 15A-1352(d).
- d. If a female defendant is convicted of a nonviolent crime and the court is provided medical evidence from a licensed physician that the defendant is pregnant or the court otherwise determines that the defendant is pregnant, the court may specify in the order that the date of service of the sentence is not to begin until at least six weeks after the birth of the child or other termination of the pregnancy unless the defendant requests to serve her term as the court would otherwise order. The court may impose reasonable conditions upon defendant during such waiting period to insure that defendant will return to begin service of the sentence. G.S. 15A-1353(a).

2. Costs:

- a. DOC reimburses counties for jail prisoners serving sentences of 30 days or more at a rate of \$18 per day, plus certain medical costs.
- b. For defendants sentenced to prison but held in the jail due to DOC's "jail backlog," DOC reimburses the county at a rate of \$40 per day. G.S. 148-29; S.L. 2007-323, sec. 17.6.

3. Credit:

- a. Credit for previous confinement
 - i. The sentencing judge—not the jail, DOC, or the clerk—is responsible for computing the amount of credit due for previous confinement. A statement of credit due must be transmitted to the custodian of the defendant. G.S. 15-196.4.
 - ii. The inmate should be credited for all time spent in custody awaiting trial, trial de novo, appeal, retrial, or pending a probation revocation hearing. This includes confinement during a presentence commitment for study or a hospitalization to determine competency to stand trial. G.S. 15-196.1.
 - iii. Though not required by the plain language of the statute, G.S. 15-196.1 was interpreted by a federal court to include time spent in confinement in another state awaiting extradition. *Childers v. Laws*, 558 F. Supp. 1284 (W.D.N.C. 1983).
 - iv. Credit applied to multiple sentences:

1. Consecutive sentences are considered as one sentence for the purposes of applying credit (i.e., creditable time is *not* multiplied by the number of consecutive sentences being served). G.S. 15-196.2.
2. When sentences are concurrent, credit applies to each. *Id.*
- v. The court must give a defendant credit for:
 1. Time jailed awaiting revocation hearing. G.S. 15-196.1.
 2. The active portion of a split sentence. *State v. Farris*, 336 N.C. 553 (1994).
 - a. NCPLS claims to have found over 35,000 days of uncredited jail time under this category alone in the past 18 months.
 3. Time spent at DART-Cherry. *State v. Lutz*, 177 N.C. App. 140 (2006).
 4. Time spent imprisoned for contempt under G.S. 15A-1344(e1). *State v. Belcher*, 173 N.C. App. 620 (2005).
 5. No credit should be awarded for time under Electronic House Arrest. *State v. Jarman*, 140 N.C. App. 198 (2000).
- b. Sentence reduction credits:
 - i. Earned time—Misdemeanants may receive earned time credit of up to four days per month of incarceration.
 - ii. Good time—Impaired driving inmates (including those serving sentences in the jail) are eligible for good time credit under rules promulgated by DOC under G.S. 148-13(b). Good time credit is awarded at a rate of 1 day of credit for each day served without infraction (in other words, you can cut the sentence in half). Jail administrators are *required* to follow this regulation under G.S. 148-13(e). The only limit to this amelioration of punishment is found in G.S. 20-179(p)(2), which says the DWI mandatory minimum may not be reduced by good time credit.
 - iii. Deductions for work for the benefit of the county—The sheriff has authority to deduct up to 4 days for every 30 days of work performed, as discussed below. G.S. 162-60.
4. Work programs:
 - a. “It is declared to be the public policy of the State that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them.” G.S. 148-62.
 - b. Work release:
 - i. When sentencing a person convicted of a misdemeanor, the sentencing court may *recommend* or, *with the consent of the person sentenced*, order that the sentenced offender be granted work release. G.S. 15A-1351(f).
 1. When you *order* work release for a misdemeanant, under G.S. 15A-1353(f), you must include the following in your commitment:
 - a. The date the work release is to begin;
 - b. The prison or jail to which the offender is committed;
 - c. A provision that work release terminates if the offender loses his or her job or violates the conditions of work release; and
 - d. A determination as to how earnings should be dispersed.
 2. Before *ordering* a misdemeanant to work release, it is a good idea to consult with the jail administrator who will have to carry out the order.
 3. When suspending a sentence, the judge does not at that time make a recommendation or order for work release; the court may, however,

- recommend or order work release at the time of revocation. G.S. 148-33.1(i).
 - ii. When sentencing a person convicted of a felony, the sentencing court may *recommend* that the sentenced offender be granted work release. G.S. 15A-1351(f).
 - c. Sheriff's authority to work inmates to benefit units of state or local government. G.S. 162-58.
 - i. The sheriff may, subject to rules set by the county commission, work inmates on projects to benefit units of state or local government.
 - ii. The sheriff, in his or her discretion, may award inmates up to 4 days of credit for each 30 days of work; a judge does not award this credit.
- 5. Modifying judgments:
 - a. A judge does not have inherent authority to modify a judgment. *State v. Bonds*, 45 N.C. App. 62 (1980).
 - i. Before a session of court expires a judgment is *in fieri* and the court has authority to modify, amend, or set aside the judgment. *State v. Edmonds*, 19 N.C. App. 105 (1973).
 - ii. A court has limited authority to correct *clerical* errors (e.g., the written judgment is at odds with what was said in court; failure to check a box on the form or checking the wrong box; citation to incorrect statute; typographical errors; incorrect case number) to make the record "speak the truth." *State v. Lineman*, 135 N.C. App. 734 (1999).
 - iii. Otherwise, a judgment may only be changed pursuant to the state's post-conviction statutes.
 - b. Limited circumstances in which sentenced confinement time may be reduced by the judge:
 - i. The court may, pursuant to a petition seeking credit not previously allowed, give a defendant proper credit against his or her sentence for prior confinement. G.S. 15-196.4; 15-196.1.
 - ii. With respect to criminal contempt sentences, the judge who finds a person in contempt may at any time terminate or reduce a sentence of imprisonment. G.S. 5A-12(c).
 - iii. With respect to the active component of a sentence to special probation, a judge could:
 - 1. Terminate probation and discharge the defendant if warranted by the conduct of the defendant and the ends of justice. G.S. 15A-1342(b); or
 - 2. For *good cause shown*, a court may modify the conditions of probation, which probably includes authority to reduce the length of any imprisonment ordered as a condition of special probation. G.S. 15A-1344(d).
 - c. A note about medical costs:
 - i. With limited exceptions, a county is responsible for the costs of medical care of inmates lawfully in its custody. G.S. 153A-224.

1. *Illustration:* An Alamance County pretrial detainee was diagnosed with spinal meningitis and transferred to N.C. Memorial Hospital in Chapel Hill. The sheriff asked a magistrate, who in turn asked a district court judge, to unsecure the inmate's bond, which the judge did. The unconscious inmate was unable to sign the bond, but the judge ordered him released without signing. The inmate remained in the hospital for over a month, incurring costs of \$99,783.56. The hospital sued the county for the medical costs.
2. The court of appeals held the county may not avoid its statutory obligation to pay for such care by releasing from its custody a prisoner in need of emergency care, even if that release is authorized by a judge. *UNC v. Hill*, 96 N.C. App. 673, *affirmed*, 327 N.C. 465 (1990).

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