

Justice Reinvestment...

1. Has had a generally positive effect
2. Hasn't changed things much
3. Has had a generally negative effect

0% 0% 0%

Has had a generally positive effect...
Hasn't changed things much...
Has had a generally negative effect...

UNC 0 of 225

My biggest concern about JR is...


1. Mandatory 90-96
2. Limits on my probation revocation authority
3. Confusion about where sentences are served
4. Other

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Mandatory 90-96...
Limits on my probation revocation authority...
Confusion about where sentences are served...
Other...


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Changes to Probation



Big Picture

- Community and intermediate punishment blended
- “Delegated authority” expanded
- Authority to revoke for “technical violations” limited



Community and Intermediate Punishment Blended

For offenses committed on or after December 1, 2011

* does not apply to DWI



Intermediate Punishment

PRIOR LAW

- Supervised probation that **MUST** include:
 - Special probation
 - Residential program
 - Intensive supervision
 - Electronic house arrest
 - Day reporting center
 - Drug treatment court

NEW LAW

- Supervised probation that **MAY** include:
 - Special probation
 - Drug treatment court
 - “Community and Intermediate conditions”
 - Other conditions in the court’s discretion



Repealed Conditions

- Intensive supervision
- Residential program
- Day-reporting center



Community Punishment

- **NEW LAW:** A non-active sentence that does not include special probation or drug treatment court, but may include any of the new “Community and Intermediate Probation Conditions”



New “Community and Intermediate” Conditions

- Electronic house arrest
- Community service
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- Short-term jail confinement (“quick dip”)





New “Community and Intermediate” Conditions

- Electronic house arrest (no \$90 fee)
- Community service (now includes \$250 fee)
- Substance abuse assessment, monitoring, or treatment
- Educational or vocational skills development
- SBM, if a covered sex offender
- Short-term jail confinement (“dip”)
- After 12/1/12: Cont. alcohol monitoring



“Dip” Jail Confinement

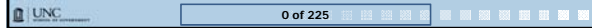
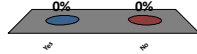
- Served in 2-3 day increments
- Maximum of 6 days per month
- Three separate months
- Total of 18 days per case
- Cannot be “stacked” from multiple cases

* does not apply to DWI



Can you order “dip” confinement at sentencing in Community cases?

1. Yes
2. No



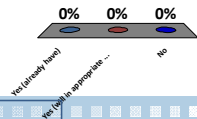
“Dip” Jail Confinement

- **Community and Intermediate conditions:** “. . . the court may include any one or more of the following conditions as part of a community or intermediate punishment.” G.S. 15A-1343(a1)
- **Community punishment:** “A sentence in a criminal case that does not include an active punishment . . . or special probation” G.S. 15A-1340.11(2)



Will you order dip confinement in community cases?

- 1. Yes (already have)
- 2. Yes (will in appropriate cases)
- 3. No



“Community and Intermediate Probation Conditions”

Date	Hour	<input type="checkbox"/> AM	for	<input type="checkbox"/> 2 days
Date	Hour	<input type="checkbox"/> PM	for	<input type="checkbox"/> 3 days
Date	Hour	<input type="checkbox"/> AM	for	<input type="checkbox"/> 2 days
Date	Hour	<input type="checkbox"/> PM	for	<input type="checkbox"/> 3 days

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Delegated Authority Expanded

For offenses committed on or after December 1, 2011

* does not apply to DWI

Delegated Authority

- Allows probation officer to add certain conditions
- Applies unless judge says otherwise

The screenshot shows a legal document from the State of North Carolina. A yellow callout box with a speech bubble points to a specific section of the document, containing the text: "The Court finds that it is NOT appropriate to delegate...". The document includes various legal terms and checkboxes, such as "ADJUDICATED GUILTY", "RESTRICTIONS", and "PROBATION".

JRA Delegated Authority

- With violation or "high risk," officer can add:
 - Community service, 20/50 hours (comm./intermed.)
 - Increased reporting to officer
 - Substance abuse assessment, monitoring, or treatment
 - Continuous alcohol monitoring (offenses on/after 12/1/12)
 - Electronic house arrest
 - Curfew with electronic monitoring
 - Educational/vocational skills development
 - SBM for covered sex offenders (intermediate only)
- Offender can petition for court review of officer-imposed conditions

JRA Delegated Authority

- In response to violation (not based on risk alone), officer can order “Quick dip”
 - 2-3 days, up to 6 days per month, in any three separate months
 - Cannot be “stacked” from multiple cases
 - Must follow detailed procedure (waiver of rights)



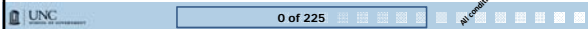
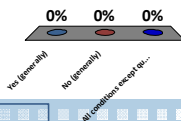
JRA Delegated Authority

- Constitutional concerns:
 - Due process
 - Separation of powers
 - Knowing/voluntary waiver



Are you allowing delegated authority?


1. Yes (generally)
2. No (generally)
3. All conditions except quick dips



Judges' Revocation Authority Limited

For probation violations occurring on or after December 1, 2011


* DOES apply to DWI



Limit on Revocation Authority

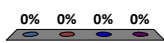
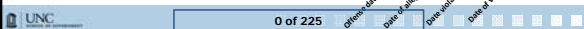
For probation violations occurring on or after December 1, 2011...

- Court may only revoke probation for:
 - New criminal offense
 - Absconding
- For other violations, court may order Confinement in Response to Violation (“CRV”)
- After two CRV periods, court may revoke for any violation



Which date matters for purposes of limiting your authority to revoke probation?

1. Offense date of crime for which person is on probation
- ✓ 2. Date of alleged offending behavior
3. Date violation report filed
4. Date of violation hearing

Confinement in Response to Violation (CRV)

- Felony CRV: 90 days
- Misdemeanor CRV: "Up to" 90 days



Confinement in Response to Violation (CRV)

- Before 2012 clarification:
 - If remaining sentence was 90 days or less, CRV was required to be for that remaining period (a "terminal CRV")
- After 2012 clarification (effective 7/16/12):
 - 90-days or less rule applies only to felonies

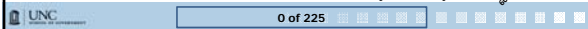
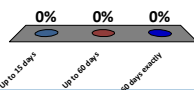


After December 1, 2011, a misdemeanor probationer with a 60-day suspended sentence violates probation by contacting a victim.

How long of a CRV period can the court order in response to the violation?

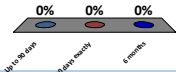
1. Up to 15 days
- ✓ 2. Up to 60 days
3. 60 days exactly

Before 2012 clarification, #3 would have been correct



After December 1, 2011, a felony probationer with an 8-19 month suspended sentence violates probation by breaking his curfew.
How long of a CRV period can the court order in response to the violation?


1. Up to 90 days
- ✓ 2. 90 days exactly
3. 6 months



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Can you still order a split sentence after the JRA?

- ✓ 1. Yes
2. No



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Post-JRA confinement types

- **Short-term jail confinement (“dip”):**
 - Up to 18 days, served in 2-3 day increments, 6 days per month
- **Special probation (“split”):**
 - One-fourth of imposed maximum
- **Confinement in Response to Violation (“CRV”):**
 - 90 days (or “up to 90” for misdemeanors)
- **Contempt**
 - Up to 30 days

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Must an offender be “dipped” before he can be “dunked”?

1. Yes
- ✓ 2. No



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Confinement in Response to Violation (CRV)

- Can CRV be served on weekends?
- Without explicit authorization, probably must be continuous (State v. Miller)
 - If you want weekends, use a split

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Confinement in Response to Violation (CRV)

- CRV periods must run concurrently with one another
 - Regardless of whether the suspended sentences were set to run consecutively

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Confinement in Response to Violation (CRV): Jail Credit

- Jail credit for time awaiting a violation hearing must be applied to CRV period
- Statute does not require—or expressly allow—crediting of other jail credit to CRV (e.g., pretrial confinement)
 - Other credit should be *considered* to determine what time remains on suspended sentence



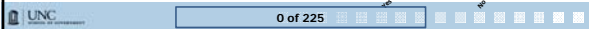
Confinement in Response to Violation (CRV): Jail Credit

- A defendant with a 100-day suspended sentence commits a technical violation. He has the following credit:
 - 5 days pretrial confinement
 - 10 days pre-hearing confinement
 - 30 days confinement credit from a prior CRV



Can you reduce a sentence when imposing CRV?

1. Yes
2. No



Confinement in Response to Violation (CRV)

- Reduction upon CRV?
- G.S. 15A-1344(d): “The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1) of this section.



Confinement in Response to Violation (CRV): Where to Serve

- CRV served where defendant would have served an active sentence
 - Felons: DAC
 - Misdemeanors: Jail or prison, depending on underlying sentence length
- CRV is served “flat”: no earned time/good time



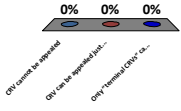
Confinement in Response to Violation (CRV): Appeals

- No statutory appeal provision for CRV
- Possibly covered under G.S. 15A-1347
- Other writs possible



What do you think?

1. CRV cannot be appealed
2. CRV can be appealed just like a revocation
3. Only "terminal CRVs" can be appealed



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CRV cannot be appealed
CRV can be appealed just like a revocation
Only terminal CRVs can be appealed

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Revocation-eligible violations

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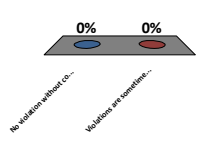
New Criminal Offense

- "Commit no criminal offense in any jurisdiction"
 - Pending charges?
 - Conviction only?

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What is the practice in your district?

- ✓ 1. No violation without conviction
- ✓ 2. Violations are sometimes based on a pending charge



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No violation without conviction

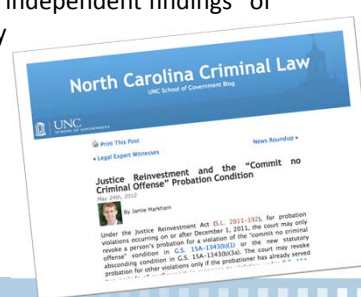
Violations are sometimes based on a pending charge

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New Criminal Offense

- Conviction OR “independent findings” of criminal activity



North Carolina Criminal Law
UNC School of Government blog

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Next Roundup

Legal Expert Witnesses

Justice Reinvestment and the “Commit no Criminal Offense” Probation Condition

By James Harkins

Under the Justice Reinvestment Act (J.R.A., 2011-202), for probation violations occurring on or after December 1, 2011, the court may only revoke a person's probation for a violation of the "commit no criminal offense" condition in G.S. 15A-1343(b)(3) or the new statutory absconding condition in G.S. 15A-1343(b)(3a). The court may revoke probation for other violations only if the probationer has already served

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Statutory Absconding

- Regular condition: “Not to abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown.”

-- G.S. 15A-1343(b)(3a)

Offenses committed on or after December 1, 2011

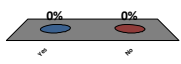
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In 2012, a defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by absconding.

Can the court revoke the defendant's probation?

1. Yes
- ✓ 2. No

This offender would not be subject to the new statutory absconding condition. The court can only revoke probation for violations of G.S. 15A-1343(b)(3a).



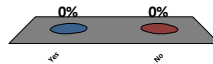
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Can you impose CRV for a new criminal offense or statutory absconding?

1. Yes
- ✓ 2. No

“When a defendant has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose [CRV].”

15A-1344(d2)



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Electing to Serve

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Electing to Serve after JRA

- No express statutory provision...since 1997
- Options:
 - Admit to new crime or absconding?
 - Reframe “technicals” as crimes?
 - Reduce-then-CRV?
 - CRV-then-terminate?
 - Contempt



Felony Sentencing




Changes to Felony Sentencing:
All felons get post-release supervision
Offenses committed on or after December 1, 2011




Advanced Supervised Release (ASR)

Pleas and findings of guilt on or after January 1, 2012



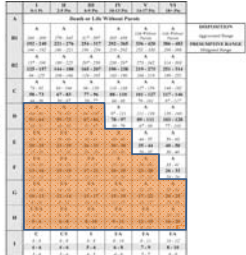

Advanced Supervised Release (ASR)

- Early release program for certain inmates
- Eligible inmates released on “ASR date” if they complete “risk reduction incentives” in DAC
- Sentencing court and prosecutor are gatekeepers
 - No ASR unless court-ordered at sentencing
 - No ASR if prosecutor objects



ASR Eligibility

- Active sentences
 - Class D, I–III
 - Class E, I–IV
 - Class F, I–V
 - Class G, I–VI
 - Class H, I–VI

Advanced Supervised Release (ASR)

- ASR date is:
 - Lowest mitigated minimum sentence the defendant could have received
 - If already mitigated, then 80% of imposed minimum

Advanced Supervised Release (ASR)

If sentence is presumptive or aggravated, ASR date is 6 months

If sentence is mitigated, ASR date is 80% of the imposed minimum (e.g., Min. 6 months → ASR date 4.8 months)

I/A
10 - 12
8 - 10
6 - 8

STATE OF NORTH CAROLINA

Violent Felonious Felony: G.S. 14-27-24(a) G.S. 14-27-24 with egregious aggravator

for a minimum term of:	8 months	and a maximum term of:	19 months	ASR term (Order No. 4, Side Two)	6 months
------------------------	----------	------------------------	-----------	----------------------------------	----------

The defendant shall be given credit for _____ days spent in confinement prior to the date of...

4. (convictions on or after January 1, 2012, only) Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.1B.



The Justice Reinvestment Act: Implementation


Jamie Markham
UNC School of Government

Anne Precythe
Division of Adult Correction



JRA Delegated Authority

- With violation or “high risk,” officer can add:
 - Community service, 20/50 hours (comm./intermed.)
 - Increased reporting to officer
 - Substance abuse assessment, monitoring, or treatment
 - Continuous alcohol monitoring (offenses on/after 12/1/12)
 - Electronic house arrest
 - Curfew with electronic monitoring
 - Educational/vocational skills development
 - SBM for covered sex offenders (intermediate only)



What does it mean to be "high risk"?

Probation's Risk-Needs Analysis

Sentencing → Intake → "First 60 Days"

- **Risk Assessment:**
 - "Offender Traits Inventory" (OTI)
 - Predicts risk of reoffending
- **Needs Assessment:**
 - "Officer Interview and Impressions"
 - "Offender Self-Report"
 - Flags criminogenic needs, e.g.:
 - Criminal peers
 - Dysfunctional family
 - Substance abuse

Risk Level	Percent Re-Arrested within 1 year
Minimal	7%
Low	16
Moderate	31
High	47
Extreme	57

Probation's Risk-Needs Analysis

SUPERVISION LEVEL

Probation's Risk-Needs Analysis

		RISK LEVEL				
		EXTREME	HIGH	MODERATE	LOW	MINIMAL
needs level	extreme	L1	L1	L2	L3	L3
	high	L1	L2	L3	L3	L3
	moderate	L2	L2	L3	L4	L4
	low	L2	L2	L4	L4	L5
	minimal	L2	L2	L4	L5	L5

MINIMUM LEVEL 3 FOR:

- Sex offenders
- DV offenders
- DWI Level 1, 2, or 3
- Gang members

What flows from the supervision level?

1. Contact standards

SUPERVISION LEVEL	L1	L2	L3	L4	L5
CONTACT STANDARDS	Frequent	Less Frequent		Remote Reporting	

What flows from the supervision level?

2. Response to Noncompliance

		SUPERVISION LEVEL					RESPONSE OPTIONS
		L1	L2	L3	L4	L5	
TYPE OF NONCOMPLIANCE	Public safety	A	A	A	A	A	A PVI - arrest B Del. Auth. Quick dip
	New crime	A/B/C	A/B/C	C	C	C	C PVI - into to court Contempt Modify/extend Del. Auth. Non-quick dip
	Recurring/multiple	A/B/C	B/C	C	D	D	Increase searches Increase drug screens Increase contacts
	Nonrecurring	C	C	D	D	D	D Refer to treatment Reprimand by CPOG Mod. payment schedule Initiate contact Reprimand by PPO
	Non-willful	D	D	D	D	D	



What flows from the supervision level?

2. Response to Noncompliance

		SUPERVISION LEVEL					RESPONSE OPTIONS
		L1	L2	L3	L4	L5	
TYPE OF NONCOMPLIANCE	Public safety	A	A	A	A	A	A. PVI - arrest B. Def. Auth. Quick dip
	New crime	A/B/C	A/B/C	C	C	C	C. PVI - site to court Contempt Modify/extend Def. Auth. Non-quick dip
	Recurring/multiple	A/B/C	B/C	C	D	D	Increase searches Increase drug screens Increase contacts
	Nonrecurring	C	C	D	D	D	D. Refer to treatment Reprimand by CPPO Mod. payment schedule Initiate contact Reprimand by PPO
	Non-willful	D	D	D	D	D	

What flows from the supervision level?

3. Use of delegated authority without violation

RISK LEVEL

		RISK LEVEL				
		EXTREME	HIGH	MODERATE	LOW	MINIMAL
needs level	extreme	L1	L1	L2	L3	L3
	high	L1	L2	L3	L3	L3
	moderate	L2	L2	L3	L4	L4
	low	L2	L2	L4	L4	L5
	minimal	L2	L2	L4	L5	L5

Have you ever discussed an offender's risk level or supervision level with a probation officer?

1. Yes
2. No





**Conditional discharge
under G.S. 90-96**
*Pleas entered or findings of guilt
on or after January 1, 2012*

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90-96, generally

- Deferral for first-time drug offenders
 - Probation without entry of judgment
 - Discharge and dismissal if successful
 - Upon violation, court may enter judgment and sentence
 - If under 22, opportunity to expunge

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90-96

- Eligibility
- Conditions
- Revocation



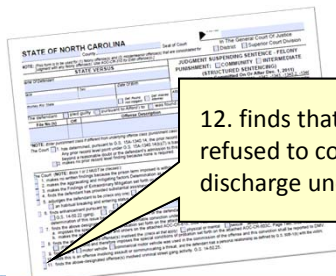
90-96(a): Eligibility

- Defendant eligibility narrowed:
 - No prior felonies (of any kind); no prior drug convictions
 - No prior discharge and dismissal
- Offense eligibility expanded:
 - All simple possession offenses (felony and misdemeanor)
 - Possession of drug paraphernalia
- “May” becomes “shall”
 - 90-96(a) made mandatory for eligible defendants (who consent)



90-96(a): Eligibility

- If defendant doesn't consent...



12. finds that the defendant refused to consent to conditional discharge under G.S. 90-96(a).



90-96(a): Eligibility

- Confirming eligibility
 - Review criminal record for disqualifiers
 - If none, query AOC confidential file for record of prior dismissal & discharge that has been expunged

STATE OF NORTH CAROLINA

County: _____ In The General Court Of Justice
 District Superior Court Division

STATE VERSUS _____ REQUEST FOR REPORT OF CONDITIONAL DISCHARGE

Number Of Defendant (Type Or Print): _____

Defendant Name: _____ State: _____ Place: _____ Sex: _____ State Of Birth: _____ (Full Social Security No.: _____) G.S. 15A-111
 Age At Time Of Offense: _____

Attorney For State: Not Present Not Waived Attorney For Defendant: Appointed Retained Not Retained

FINDINGS AND REQUEST

The Court hereby finds that:

1. The defendant named above has been charged with an offense that may qualify the defendant for a conditional discharge pursuant to: G.S. 90-96 G.S. 90-113.14 G.S. 14-50.29
2. In the absence of a prior conditional discharge that would disqualify the defendant, he/she is otherwise eligible for such conditional discharge under the statute identified.
3. The defendant has pled guilty to or been found guilty of the offense charged.
4. **In anticipation of the disposition of the charge(s), and in the interest of an expeditious resolution in the event of a possible verdict of guilt, the State and defendant jointly have requested, as indicated by their signatures below, that the Court hereby find that the defendant has a prior conditional discharge that would disqualify him/her for such conditional discharge.**

“In anticipation of the disposition of the charge(s), and in the interest of an expeditious resolution in the event of a possible verdict of guilt . . .

Are lawyers in your district preparing AOC-CR-237 forms in advance?

1. Yes
2. No



90-96(a): Eligibility

- FAQ: What if defendant is convicted of multiple G.S. 90-96 eligible offenses at the same time?
 - G.S. 90-96 probation for all of them



90-96(a1)

- Discretionary discharge under G.S. 90-96(a1)
 - 7-year look-back period for prior convictions



90-96 Probation

- Generally, ordinary probation rules apply.
 - State v. Burns, 171 N.C. App. 759 (2005)
- G.S. 90-96(a)
 - Does not mandate particular conditions
 - Drug education program optional
 - Supervised or unsupervised, up to 5 years
- G.S. 90-96(a1)
 - Must be for at least 1 year
 - Drug education school mandatory



90-96 Probation Violations

- May be revoked for any violation (no limits on revocation authority)
- Incarcerative conditions inapplicable (no splits, dunks, dips, etc.)
- Best to return to county of origin



Place of Confinement

Sentences imposed on or after January 1, 2012



Place of Confinement

Pre-January 1, 2012

Felons: DOC, except for board request

Misdemeanants:

1-90 days: Local jail, unless overcrowded

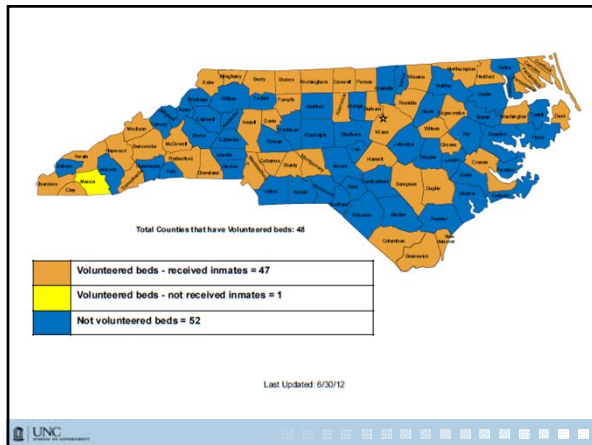
91+ days: Jail or judge's discretion
181+ days: Statewide Mis. Confinement Pgm. DAC



MCP Agreement

- Contract between county, DPS, and the sheriff
- Reimbursement rates
 - \$40/day for housing
 - \$25/hour for supervision during transport
 - \$0.55/mile for transport





MCP Money

- Statewide Misdemeanant Confinement Fund established in 2011
- Funded by new court costs
 - \$18 district court cost
 - \$50 Improper Equipment cost
 - Expected to generate \$31 million annually
- 10% to N.C. Sheriffs' Association
- 1% to DAC



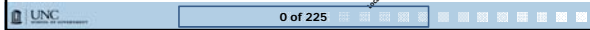
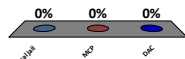
Place of Confinement Rules

Sentence or sentences imposed of more than 180 days: DAC



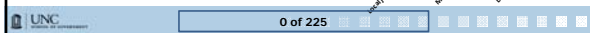
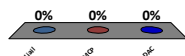
You sentence a defendant to consecutive 60-day sentences for two misdemeanors. What is the proper place of confinement?

- ✓ 1. Local jail
- 2. MCP
- 3. DAC



You sentence a defendant to consecutive 100-day sentences for two misdemeanors. What is the proper place of confinement?

- 1. Local jail
- 2. MCP
- ✓ 3. DAC



G.S. 15A-1352

“A person sentenced for a misdemeanor who has a sentence imposed...that requires confinement for a period of more than 90 days and up to 180 days...shall be committed...to the [MCP].”

vs.

“If the sentence or sentences imposed require confinement for more than 180 days, the commitment must be to [DAC].”



DWI Confinement Rule

- JRA did not change the DWI rule
 - G.S. 20-176(c1)



DWI Confinement Rule

- If first DWI and never jailed for Ch. 20 violation:
 - Jail, regardless of sentence length
- If second/subsequent DWI or previously jailed for a Ch. 20 violation:
 - 90 days or less: Local jail
 - 91-180 days: Local jail or DAC in court’s discretion
 - 181+ days: DAC



Place of Confinement

- JRA did not change split sentence rule (G.S. 15A-1351):
 - Jail or prison, court discretion
 - Must be jail if noncontinuous



Related issues

- “Dips”: Jail
- CRV (“dunks”): Served where the defendant would have served an active sentence
 - Look at the judgment suspending sentence
 - MCP if suspended sentence 91-180 days
 - DAC if a felony



Place of Confinement

- Correcting errors in place of confinement



Jail fees (G.S. 7A-313)

- Pretrial confinement:
 - \$10/day
 - Mandatory, unless waived for good cause
- Probationary confinement:
 - \$40/day
 - Optional for split sentences
 - Could apply to “dips” ordered by judge
 - Probably does not apply to CRV

