

Justice Reinvestment: Exercises and Answers

1. **A Prior Record Level II defendant is convicted of a Class H felony (offense date after December 1, 2011). What is the longest permissible sentence in the presumptive range?**

8-19 months (was, 8-10 months).

2. **After January 1, 2012, a Prior Record Level III defendant pleads guilty to a Class H felony with an agreement to a sentence at the top of the presumptive range and admission into DOC's Advanced Supervised Release (ASR) program. What is the defendant's sentence, including the ASR date?**

10–21 months, with an ASR date of 6 months. The ASR date is the lowest minimum sentence the defendant could have received from the mitigated range for his offense and Prior Record Level.

3. **After January 1, 2012, a Prior Record Level I defendant pleads guilty to a Class D felony. The plea agreement calls for a sentence at the bottom of the mitigated range and admission to the ASR program. What is the sentence, including the ASR date?**

38–58 months, with an ASR date of 30.4 months (80% of the imposed minimum).

4. **For an offender in a C/I/A cell, the court orders supervised probation with electronic house arrest. What type of sentence is it, community or intermediate?**

It is unclear based on the sentence alone; presumably the court decides and should indicate that decision on the judgment. The distinction matters for the purposes of determining the permissible length of the period of probation under G.S. 15A-1343.2(d); for determining whether the four additional "intermediate" conditions set out in G.S. 15A-1343(b4) apply; and for determining what additional conditions a probation officer can add through delegated authority.

5. **A first-time offender (Prior Conviction Level I) is convicted of a Class 1 misdemeanor for an offense occurring after December 1, 2011. The sentencing grid allows for 1–45 days: Community. Which of the following conditions can the court lawfully impose at sentencing:**

- a. Residential substance abuse program (assume screening and assessment show a need for treatment)
- b. Electronic house arrest
- c. Jail confinement of up to 18 days, served in 2–3 day intervals with no more than 6 total days per month
- d. Drug treatment court
- e. Special probation
- f. Intensive supervision

a., b., and c. Drug treatment court and special probation are permissible only for intermediate punishments. Intensive supervision is repealed for offenses committed on or after December 1, 2011.

6. Assume the court does not impose any special conditions of probation on the defendant from Exercise #1. A few months after sentencing, DOC determines, based on its risk assessment (the Offender Traits Inventory, or OTI), that the defendant from Exercise #5 is a “high risk” offender. Which of the following conditions of probation could a probation officer impose through delegated authority?

- a. 20 hours of community service
- b. Report to the officer at a frequency determined by the officer
- c. Submit to substance abuse assessment, monitoring, or treatment
- d. Electronic house arrest
- e. Electronically monitored curfew
- f. Educational or vocational skills development program
- g. Jail confinement of up to 18 days, served in 2–3 day intervals with no more than 6 total days per month.

Assuming the court did not find at sentencing that delegation was inappropriate in the case, any except g. Jail confinement can only be imposed if the officer determines that the offender has failed to comply with one or more of the conditions imposed by the court; it cannot be imposed based on risk level alone.

7. Assume the court sentenced the defendant from Exercise #5 to 45 days, suspended for 18 months. The defendant violates probation by failing to pay restitution.

a. Can the court revoke the defendant’s probation?

No. For violations of probation occurring on or after December 1, the judge can only revoke probation for defendants who violate the “commit no criminal offense” condition or the “absconding” condition set out in new G.S. 15A-1343(b)(3a), or who have previously received two periods of confinement in response to violation under G.S. 15A-1344(d2).

b. What forms of confinement could the court impose in response to the violation?

- “Quick dip” under G.S. 15A-1343(a1)(3): Up to 18 days served in 2–3 day increments, 6 days per month across 3 months.
- Special probation under G.S. 15A-1351(a): Up to 11 days (one-fourth of 45 days).
- Confinement in response to violation (CRV) under G.S. 15A-1344(d2): 45 days. Note that the law allows “up to 90 days” of CRV for misdemeanors, but also provides that if the time remaining on the defendant’s sentence is 90 days or less, then the CRV term is for the remaining period of the sentence. Thus, if CRV is imposed for sentence of 90 days or less, it has an effect similar to a probation revocation.

8. A defendant has a suspended sentence of 150 days. How long of a period of confinement in response to violation (CRV) under G.S. 15A-1344(d2) can be ordered in response to a violation of probation other than a new criminal offense or absconding?

Up to 90 days. (Note that if the defendant’s first CRV period is 60 days or more, then a second CRV period in response to a subsequent violation would be for the remainder of the sentence.)

9. A felony probationer with an 8–19 month suspended sentence commits a “technical violation” (not a new crime, not absconding).

a. Can the court revoke the defendant’s probation?

No. For violations of probation occurring on or after December 1, the judge can only revoke probation for defendants who violate the “commit no criminal offense” condition or the “absconding” condition set out in new G.S. 15A-1343(b)(3a), or who have previously received two periods of confinement in response to violation under G.S. 15A-1344(d2).

b. What forms of confinement could the court impose in response to the violation?

- *“Quick dip” under G.S. 15A-1343(a1)(3): Up to 18 days served in 2–3 day increments, 6 days per month across 3 months.*
- *Special probation under G.S. 15A-1351(a): Up to 4.75 months (one-fourth of 19 months).*
- *Confinement in response to violation (CRV) under G.S. 15A-1344(d2): 90 days.*

10. A defendant with an 8–19 month suspended sentence has served two prior 90-day CRV periods in response to technical violations. What confinement can the court order in response to a third technical violation?

- *Revocation of probation and activation of the remaining suspended sentence.*
- *“Quick dip” under G.S. 15A-1343(a1)(3): Up to 18 days served in 2–3 day increments, 6 days per month across 3 months.*
- *Special probation under G.S. 15A-1351(a): Up to 4.75 months (one-fourth of 19 months).*

11. A defendant with a suspended sentence of 8–19 months is held in confinement for 20 days in advance of her probation violation hearing. What is the longest CRV period she could serve in response to any technical violation found?

70 days. Under G.S. 15A-1344(d2), the judge must first credit any confinement time spent awaiting the hearing to any CRV imposed. In other words, the time cannot be banked as it can when a suspended sentence is imposed.

12. A defendant is on probation in two cases, both with 8–19 month suspended sentences that are set to run consecutively in the event of revocation. The defendant commits technical violations in both cases. How would CRV periods be served in response to the violations?

90 days is the proper CRV period for each. Additionally, G.S. 15A-1344(d2) requires that for probationers on probation for multiple offenses, CRV periods must run concurrently on all cases related to the violation. Confinement begins immediately unless otherwise specified by the court.

13. In March 2012, a defendant is alleged to have violated probation by committing a new criminal offense. Can the court order CRV in response to the violation?

No. Under G.S. 15A-1344(d2), CRV is permissible only for violations of probation other than the “commit no criminal offense” condition or the “absconding” condition.

14. In 2012, a defendant on probation for an offense that occurred before December 1, 2011, is alleged to have violated probation by absconding. The absconding allegedly took place in early 2012. Can the court revoke the defendant's probation?

No. Only defendants on probation for offenses that occur on or after December 1, 2011, are subject to the new "absconding" condition set out in new G.S. 15A-1343(b)(3a), and only violations of that statutory condition are subject to revocation. For offenders on probation based on offenses occurring before that date, "absconding" is typically a violation of the "remain within the jurisdiction" condition or the "report to the probation officer" condition.