Answers and explanations

1. **Error**. G.S. 15A-1343.2 sets out default lengths for periods of probation as follows:

   Misdemeanants sentenced to community punishment: 6 – 18 months;
   Misdemeanants sentenced to intermediate punishment: 12 – 24 months;
   Felons sentenced to community punishment: 12 – 30 months;
   Felons sentenced to intermediate punishment: 18 – 36 months.

   The court may always deviate from these defaults and order probation of up to 5 years if it "finds at the time of sentencing that a longer period of probation is necessary." There is check-box on the AOC forms to indicate that the judge has made the requisite finding. *State v. Branch*, 194 N.C. App. 173 (2008).

2. **No error.** The court of appeals reads G.S. 15A-1344(d) to permit a revoking court to impose consecutive sentences upon revocation of probation, without regard to whether the sentences were run concurrently or consecutively in the original judgment. *State v. Hanner*, 188 N.C. App. 137 (2008). Note: If the revocation order does not state that activated sentences are to run consecutively, they will be run concurrently—even if the original judgment ran the sentences consecutively.

3. **No error.** It would be improper to count the misdemeanor DWI convictions for prior record points when sentencing the felony habitual DWI itself. *State v. Gentry*, 135 N.C. App. 107 (1999). But there's nothing wrong with counting points for all the prior offenses (misdemeanor DWIs and felony habitual DWI) when sentencing for a later offense. *State v. Hyden*, 175 N.C. App. 576 (2006).

4. **Error.** The defendant's freedom at DART-Cherry was sufficiently limited for the time to count as "confinement" under G.S. 15-196.1. *State v. Lutz*, 177 N.C. App. 140 (2006).

5. **No error.** Electronic house arrest is neither confinement nor custody under G.S. 15-196.1. *State v. Jarman*, 140 N.C. App. 198 (2000).

6. **No error.** The court of appeals determined that the time a defendant spent jailed pursuant to a contempt finding is time spent "incarcerated for violation of her probation," and thus ought to count for credit under G.S. 15-196.1. *State v. Belcher*, 173 N.C. App. 620 (2005).

7. **Error.** Under G.S. 15A-1351(a), the total of all periods of confinement imposed as an incident of special probation may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense. It is the maximum *imposed* sentence (100 days), not the maximum penalty *allowed by law* (120 days) that determines total permissible special probation confinement period.

8. **No error.** Under G.S. 15A-1351(a), in impaired driving cases, the total of all periods of special probation confinement may not exceed one-fourth the maximum penalty *allowed by law*.

9. **Error.** Under G.S. 15A-1343(b2), a defendant convicted of a reportable (i.e., registrable) conviction as defined in G.S. 14-208.6(4)—which includes sexual battery—must abide by the special conditions of probation set out in that subsection. For offenses that involve the sexual abuse of a minor, the offender

must not reside in a household with any minor child. G.S. 15A-1343(b2)(4). "Sexual abuse of a minor" is not a defined term. If the court concludes that sexual battery against a 12-year-old is sexual abuse of a minor, it should include the condition that the offender not reside in a household with any minor child.

10. **Error.** The special conditions of probation in G.S. 15A-1343(b2) also apply to offenders convicted of non-reportable crimes that involved the "physical, mental, or sexual abuse of a minor." Like sexual abuse of a minor, "physical abuse of a minor" is not a defined term. If the court determines that assault on a female against a 12-year-old involves the abuse of a minor, it should consider adding the appropriate conditions in G.S. 15A-1343(b2).

11. **Error.** Community punishment may not include any of the intermediate conditions set out in G.S. 15A-1340.11(6). There is, however, a limited exception to this rule in certain domestic violence cases. Under G.S. 15A-1382.1, if the offense involved assault or communicating a threat, and if the presiding judge determines that there was a personal relationship between the defendant and the victim, the judge may order electronic house arrest under G.S. 15A-1343(b1)(3c) even when a community punishment is imposed.

12. **No error.** Upon a finding that an offender sentenced to community punishment has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. G.S. 15A-1344(a).

13. **Error.** When a prayer for judgment continued includes conditions—like restitution—that amount to punishment, the PJC loses its character as a PJC and becomes a final judgment. *State v. Popp*, 676 S.E.2d 613 (N.C. Ct. App. 2009); *State v. Brown*, 110 N.C. App. 658 (1993). Once a judgment is final the court loses authority to modify it after adjournment of the term. *State v. Duncan*, 222 N.C. 11 (1942).

14. **Error.** For misdemeanors, the cumulative length of the sentences of imprisonment may not exceed twice the maximum sentence *authorized* for the *class and prior conviction level* of the most serious offense. G.S. 15A-1340.22. The court in this scenario used twice the maximum sentence for the hypothetical worst-case offender (i.e., a Level III offender), or 2 times 120, to come up with a 240 day sentence. The maximum sentence authorized for a Level II/Class 1 offender is 45 days. Thus, the cumulative length of imprisonment for these offenses may not exceed 90 days. That is true whether or not any of the sentences are suspended. *State v. Wheeler*, 688 S.E.2d 51 (N.C. Ct. App. 2010). Recall that if all of the convictions are for Class 3 misdemeanors, consecutive sentences may not be imposed.

15. **No error.** When committed between persons who have a personal relationship as defined in G.S. 50B-1(b) (which includes former spouses), assault on a female is an offense covered under the Crime Victims' Rights Act (CVRA), Article 46 of Chapter 15A of the General Statutes, G.S. 15A-830(7)g. In CVRA cases, under G.S. 15A-1340.38(a) and G.S. 15A-1340.34(b), restitution orders exceeding $250 may be "enforced in the same manner as a civil judgment." When CVRA restitution is ordered as a condition of probation, the judgment may not be executed upon the defendant's property until the clerk is notified that the defendant's probation has been terminated or revoked and the judge has made a finding that restitution in a sum certain remains owed. G.S. 15A-1340.38.

16. **Error.** When a defendant appeals to superior court because a district court has found he violated probation and has activated his sentence, and the superior court, after a de novo revocation hearing, orders that the defendant continue on probation under the same or modified conditions, the superior court is considered the court that originally imposed probation with regard to future revocation proceedings. G.S. 15A-1347. The district court, therefore, would have no jurisdiction to act in this scenario.

17. **Error.** The court may delegate to a probation officer the responsibility to determine a payment schedule, G.S. 15A-1343(g), but the court should determine the total restitution amount.

18. **No error.** Under G.S. 15A-1344(f), a court may extend, modify, or revoke probation after the expiration of the period of probation if a violation report is filed before the end of the probation period, the court finds that a violation occurred prior to expiration, and the court finds for good cause shown and stated that probation should be extended, modified, or revoked. The statutory requirement for the court to make a finding of the state's "reasonable effort to notify the probationer and to conduct the hearing earlier" in order for the court to preserve its jurisdiction to act after expiration was removed by the General Assembly in 2008 (S.L. 2008-129), effective for hearings held on or after December 1, 2008.

19. **Error.** The question of whether an out-of-state conviction is substantially similar to a North Carolina offense is a question of law to be resolved by the trial court. Stipulations as to questions of law are generally invalid. *State v. Palmateer*, 179 N.C. App. 579 (2006). Note, however, that findings of substantial similarity are only required when the state or the defendant seeks to have an out-of-state conviction treated as something other than the statutory default for out-of-state crimes (Class 3 for misdemeanors and Class I for felonies). *State v. Hinton*, 675 S.E.2d 672 (N.C. Ct. App. 2009). Form AOC-CR-600, Worksheet for Prior Record Level, includes a check-box for this finding.

20. **Error.** The first extension was fine—under G.S. 15A-1344(d), the court may, at any time prior to expiration and for good cause shown, extend the period of probation up to the maximum allowed under G.S. 15A-1342(a), 5 years. The second extension is the error. Under G.S. 15A-1343.2, the court may, with the consent of a probationer, extend the original period of probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. That extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation. In this scenario, the statute is satisfied, except that the offender is not in the last six months of his *original* period of probation. The original period was three years. Only when the original period is 5 years can probation be extended to as long as 8 years under this provision.