

Justice Reinvestment: Exercises and Answers

1. **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 Intensive supervision is repealed for offenses committed on or after December 1, 2011.

2. **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 #1 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.

3. **Assume the court sentenced the defendant from Exercise #1 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.*

4. 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.)

5. In January 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?

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). 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.

6. 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.

7. A defendant whose suspended sentence was initially 150 days has had two prior probation violations other than a new criminal offense or absconding. In response to both, the court imposed 20 days of CRV. What confinement can be imposed in response to a third such 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 37 days (one-fourth of 150 days).*
- *Revoke probation and activate the suspended sentence (crediting the CRV periods and any other jail credit the defendant might have).*

- 8. A defendant with a suspended sentence of 120 days is alleged to have violated probation by failing to pay restitution. She 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 the violation?**

70 days. Under G.S. 15A-1344(d2) (as amended by House Bill 335), 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.

- 9. A defendant is on probation in two cases, both having 45-day suspended sentences that are set to run consecutively in the event of revocation. The defendant violates probation by failing to pay restitution in both cases (assume the violations are willful). How would CRV periods be served in response to the violations?**

Because both cases have 90 days or less remaining on the sentence, 45 days (the time remaining on each sentence) is the proper CRV period for each. Additionally, G.S. 15A-1344(d2) (as amended by House Bill 335) 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.

- 10. A Prior Record Level II defendant pleads guilty in district court to a Class H felony committed after December 1, 2011. What is the longest sentence the court can give from the presumptive range?**

8–19 months.

- 11. Assume the court gives the defendant from Exercise #11 the longest permissible sentence in the presumptive range, suspended. The defendant violates probation by failing to pay restitution.**

a. Can the court revoke probation?

No. As with misdemeanors, for violations of probation on or after December 1, 2011, the court may revoke probation only for violations of the “commit no criminal offense” condition and the “absconding” condition set out in new G.S. 15A-1343(b)(3a).

b. What confinement can the court order 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. Felony CRV periods must be 90 days.*

12. 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. If the defendant were sentenced in the mitigated range, the ASR date would be 80% of the minimum sentence imposed.