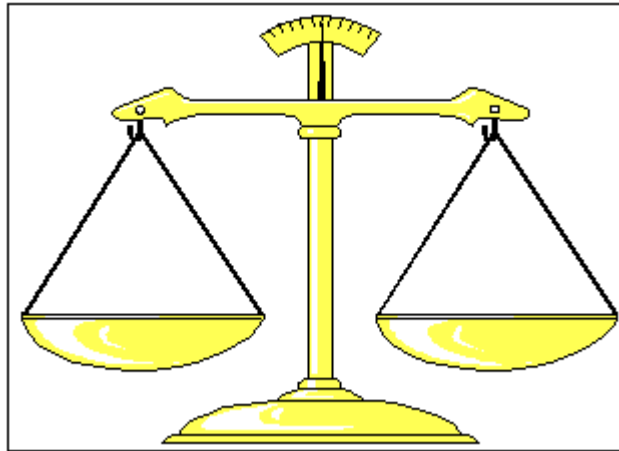


**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



***REPORT ON STUDY OF  
CREDIT FOR TIME SERVED ISSUES***

**MARCH 2014**

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# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## REPORT ON THE STUDY OF CREDIT FOR TIME SERVED ISSUES

March 7, 2014

### Introduction

On August 29, 2013, Commissioner David Guice of the Department of Public Safety, Division of Adult Correction and Juvenile Justice, submitted a request to the Sentencing and Policy Advisory Commission asking it to study the statutory provisions related to the awarding of time credits against sentences of imprisonment and confinement—specifically, the statutory provisions in N.C.G.S. §§ 15-196.1 through 15-196.4. (*See* Appendix A: Commissioner Guice’s letter to the Sentencing Commission). Commissioner Guice’s request focused on three areas of study:

1. Jail credit statutes are not clear regarding the awarding of credits.
2. Jail credit statutes do not address new changes in the laws.
3. There is confusion regarding the collecting and calculating of jail credit.

In response to the request, the Sentencing Commission established the Credit for Time Served Subcommittee at its December 6, 2013, meeting. The Commission charged the Subcommittee to study the issues raised by Commissioner Guice and any other issues related to the awarding of time credits against sentences.

### Subcommittee Meetings

The Credit for Time Served Subcommittee first met on Friday, January 31, 2014. Staff categorized the issues submitted for consideration into legal issues, issues where additional empirical data would be helpful or necessary before consideration, and logistical issues. From this, staff created a worksheet of problem areas in the law the Subcommittee could address. (*See* Appendix B: Subcommittee worksheet of credit for time served issues). The problem areas were grouped into issues regarding the definition of credit, the application of credit against multiple sentences, and confinement in response to violation (CRV) credit. The Subcommittee worked through the items on the worksheet. For each problem, staff reviewed the relevant statute, stated what the point of contention was, and facilitated discussion regarding the different ways the discrepancy materialized in practice. Subcommittee members discussed each of the problems and either proposed preliminary solutions or raised additional questions. Staff was asked to provide additional information at the next meeting.

The Subcommittee also heard two presentations on the Record Keeping of Jail Credit in Practice, one from Captain Roger McCoy of the Mecklenburg County Sheriff’s office, representing the N.C. Sheriff’s Association, and one from the Honorable Lorrin Freeman, Wake County Clerk of Court, representing the N.C. Conference of Clerks of Superior Court. Both speakers walked the subcommittee members through the process they use to track credit and the problems they encounter, and answered questions.

The Subcommittee met again on Friday, February 28, 2014. First, the Subcommittee reviewed issues raised by Commissioner Guice that related to the imposition of CRVs. The members acknowledged that these issues dealt with the implementation of CRVs and not with awarding time credits and, therefore, it would be more appropriate for the Justice Reinvestment Implementation Evaluation Report Subcommittee to study them.

The members then heard another presentation on the Record Keeping of Jail Credit in Practice, this time from Angela Sintef of the Combined Records Section of the Department of Public Safety. She explained what takes place during an audit of a judgment and how that fits into the offender's OPUS (DPS) record. This led to members identifying and discussing additional issues related to time credits that the Subcommittee could study.

Finally, the Subcommittee reviewed the legal issues discussed at the last meeting and some of the preliminary decisions it made. For the issues related to the definition of credit, the Subcommittee adopted two recommendations (see below), and felt these recommendations would address some of the other issues presented. For the issue regarding application of credit against multiple sentences, the Subcommittee decided the law is sufficiently clear and the policy should not be changed. For the CRV credit issues, the Subcommittee discussed at length the need for a full ninety day CRV period and how credit application can impact that versus the right of the defendant to receive credit for time he has served. The Subcommittee also recognized that CRV was still relatively new and there was little data regarding its application. Several members pointed to the need for additional programming for the CRV to be successful. The Department of Public Safety informed the Subcommittee that they were revisiting the structure and approach to CRVs in general, including terminal CRVs. In light of the potential for changes to CRVs, the Subcommittee decided not to recommend any legal amendments to the CRV statute at this time.

The Subcommittee presented its findings to the Sentencing Commission at its meeting on March 7, 2014. The Commission discussed the recommendations and adopted them.

## **Recommendations**

- 1. The Sentencing Commission recommends that time spent in custody should count for credit against a defendant's sentence if the defendant's original charge and ultimate conviction arose out of the same incident.**

*Commentary:* G.S. 15-196.1 requires a defendant's sentence to be reduced by the number of days he or she has spent in custody "as a result of the charge that culminated in the sentence." It is not clear how broad of a link is permissible between the original charge and the offense for which the defendant is ultimately convicted. The Subcommittee decided that a defendant should receive credit when the criminal behavior resulting in the defendant's conviction is the same behavior for which the defendant was originally charged. When addressing the specific language to use to clarify the link, the Subcommittee considered "behavior," "incident," and "course of conduct." The Subcommittee felt that "behavior" was too narrow and that "course

of conduct” could potentially accredit multiple offense dates of a similar scheme, so the Subcommittee decided on “incident.” (See Appendix C: Draft Legislation).

- 2. The Sentencing Commission recommends that a defendant should be given credit for time spent in custody unless another sentence was imposed prior to the accrual of credit on the case currently being sentenced.**

*Commentary:* G.S. 15-196.1 authorizes credit for time spent in custody unless that time is credited on the term of a previously imposed sentence to which a defendant is subject. The General Statutes do not define “a previously imposed sentence” and, therefore, it is applied differently throughout the state. For example, a defendant who is held in custody pretrial on two charges accrues credit on both charges. If the defendant is sentenced on one offense before the other, some courts will apply the credit to the first offense and deem it unusable towards the second offense, while others would allow the application of credit on both offenses. The Subcommittee stated that the defendant should receive credit on both sentences in that situation and that the language should be clarified to prohibit accrual of credit only when the defendant is already serving an active sentence on another offense. (See Appendix C: Draft Legislation).

- 3. The Sentencing Commission refers Commissioner Guice’s questions regarding the imposition of terminal CRVs to the Justice Reinvestment Implementation Evaluation Report Subcommittee for further study.**

*Commentary:* Commissioner Guice asked the Sentencing Commission to study the imposition of CRVs in misdemeanor cases; specifically, whether the majority of CRVs are terminal, how often judges are imposing CRVs and terminating community supervision upon completion, and why judges are not imposing shorter CRV periods so that the offenders can then return to community supervision. The Subcommittee pointed out that these issues do not involve the awarding of time credits against sentences. It also noted that there is very little data available at this time to determine how often this is happening and in what circumstances. The Subcommittee stated that the Justice Reinvestment Implementation Evaluation Report Subcommittee is charged with studying the Justice Reinvestment Act and may be better suited for a detailed study of the imposition of CRVs.

## **Appendices**

- A. Commissioner Guice's letter to the Sentencing Commission
- B. Subcommittee worksheet of credit for time served issues
- C. Draft legislation





# North Carolina Department of Public Safety

## Adult Correction

Pat McCrory, Governor  
Frank L. Perry, Secretary

W. David Guice, Commissioner

August 29, 2013

Honorable W. Erwin Spainhour, Chairman  
N.C. Sentencing and Policy Advisory Commission  
P.O. Box 2448  
Raleigh, NC 27602

Dear Judge Spainhour:

I am writing to request that the Sentencing Commission consider studying the statutory provisions provided in N.C.G.S. §§ 15-196.1 to -196.4 related to the awarding of time credits against sentences of imprisonment and confinement.

In general, the statutes are either not clear regarding the awarding of credits or, as in the case with new laws like the Justice Reinvestment Act, they do not address certain issues. In addition, there has been some confusion as to who is responsible for collecting and calculating the various jail days an offender has served. This lack of clarity may lead to differences in the interpretation and application of credit for time served.

I believe that reviewing the appropriate statutes and recommending any necessary changes would help make the sentencing and correctional process fair and efficient, as well as potentially affecting the utilization of scarce prison and jail resources.

I appreciate your time and interest in considering my request.

Sincerely,

W. David Guice

WDG/jk

cc: Susan Katzenelson

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## **Feasibility of Sentencing and Confinement Time Credits Study**

- The intent of JRA was for technical violators, especially felons, to receive a defined period of confinement where intensive programming would occur to address and improve non-compliant behavior and return these offenders to community supervision.
- The programming would cover the major needs of offenders including CBI, substance abuse, education, and life skills, and occupy the vast majority of each day; and that these offenders would not be mixed with the regular inmate population or treated as a regular inmate.
- The average number of days in prison for all CRV offenders is 61 days and 74 days for felons which include 7 to 10 days of diagnostic processing and transport to a facility. The intent of the law is for the offender to serve 90 continuous days in order to receive the intensive programming.
- It appears that CRVs for misdemeanors is in fact becoming a terminal CRVs. The offender serves a specified time (up to 90 days) and upon completion the offender is terminated from community supervision. This goes against the intent of Justice Reinvestment of returning an offender to community supervision after serving a CRV.
- There has been some anecdotal evidence that the court is imposing a CRV in felony cases then terminating community supervision upon completion of the CRV.
- The only time that is credited by statute towards a CRV is time in custody awaiting the probation violation hearing; however there seems to be a large amount of credit being given towards CRVs, especially in felony cases. There are probably several explanations including the fact that in some jurisdictions Superior court is not held on a frequent basis; however these reasons should be examined.
- It appears that time credited towards the Confinement in Response to Violations is inconsistently recorded across the state which has unduly shortened the CRV time.
  - Several anecdotal examples of the inconsistency in recording time credit towards CRVs such as pre-trial time. Also, there are examples of the court using the minimum sentence for felonies to determine if a terminal CRV should be imposed.

- The Community Supervision Staff have been trained and instructed to assist the court in determining the correct amount of time credit however they are not the legal authority therefore they do not have final say of credited time. Although several training initiatives such as webinars, conferences and local meetings have been conducted with other stakeholders, there still seems to be an inconsistent recording and awarding of time credits towards confinement.

With these points in mind, we respectfully request a study be conducted by the Sentencing Commission to answer the following questions:

1. Are credits for time served being awarded consistently according to the statutes when a CRV is being imposed?
2. Are the majority of CRVs imposed on Misdemeanor cases in fact terminal CRVs?
3. If the majority of CRVs imposed on Misdemeanor cases are terminal, then what are the reasons the courts are not imposing shorter CRV time periods to ensure the offender returns to community supervision?
4. Are there a significant number of instances in which the court has imposed a CRV then terminated community supervision upon completion of the CRV?"
5. Based on these findings, are there any recommendations to change the statutes in order to enhance the intent of the Justice Reinvestment Act?

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION  
CREDIT FOR TIME SERVED SUBCOMMITTEE  
January 31, 2014**

**CREDIT FOR TIME SERVED ISSUES**

**LEGAL QUESTIONS**

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**Definition of Credit:**

Relevant statute: G.S. 15-196.1

1. When should time spent in custody be considered “as a result of the charge that culminated in the sentence”?
  - A. When the charge on intake is the charge defendant is ultimately convicted of.
  - B. When the conviction is a lesser included charge of the original.
  - C. When the criminal behavior resulting in defendant’s conviction is the same behavior for which the defendant was originally charged.
  - D. Any time spent in custody prior to conviction, related to the original charge or not.
  
2. When should a sentence be considered “previously imposed”?
  - A. If the sentence was imposed prior to the accrual of credit on the case currently being sentenced.
  - B. If the sentence was imposed prior to sentencing of the current case.
  
3. How should credit be applied when an offender is sentenced in district court and superior court on the same day?
  - A. Presumed credit applied to both sentences unless ordered otherwise.
  - B. First sentence entered uses up credit unless ordered otherwise.
  
4. Should time spent serving a sentence for contempt count towards the sentence on the underlying offense?

**Application of Credit against Multiple Sentences:**

Relevant Statute: G.S. 15-196.2

5. If sentences are ordered consecutive, how should shared pretrial credit apply toward the sentence?
  - A. Credit counts once toward the full length of the sentence.
  - B. Each charge the defendant was held on counts independently towards the full length of the sentence.

**CRV Credit Issues:**

Relevant Statute: G.S. 15A-1344(d2)

6. Should pretrial confinement credit be applied to a CRV?
7. How should CRV credits apply to a consecutive sentence when it is activated?
  - A. Time spent serving CRVs counts once toward the full length of the sentence.
  - B. Each CRV the defendant served counts independently towards the full length of the sentence.

**EMPIRICAL DATA NEEDED**

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**Use of Terminal CRVs:**

8. Is probation being terminated after one CRV for misdemeanants? Felons?
9. Are active sentences being modified when imposing terminal CRVs for felons?

**LOGISTICAL**

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**Recording of Credit:**

10. Is credit captured when an offender is confined in multiple counties?
11. What are possible areas for improvement in correctly calculating credit for time served?

## Draft Legislation

- 1. The Subcommittee recommends that time spent in custody should count for credit against a defendant's sentence if the defendant's original charge and ultimate conviction arose out of the same incident.**

### **§ 15-196.1. Credits allowed.**

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence: or the incident from which the charge arose.

- 2. The Subcommittee recommends that a defendant should be given credit for time spent in custody unless another sentence was imposed prior to the accrual of credit on the case currently being sentenced.**

### **§ 15-196.1. Credits allowed.**

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that ~~is credited on the term of a previously imposed sentence to which a defendant is subject.~~ a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense.