

Community Punishment and Intermediate Punishment

Author : Jamie Markham

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Under Structured Sentencing, there are two types of non-active sentences: community punishment and intermediate punishment. Intermediate punishment is supervised probation plus at least one of six specific conditions of probation (special probation, residential program, electronic house arrest, intensive supervision, day reporting center, and drug treatment court). [G.S. 15A-1340.11\(6\)](#). A community punishment is any other non-active sentence that did not include one of those six conditions. G.S. 15A-1340.11(2). About 44 percent of felony convictions result in an intermediate punishment (compared to 16 percent community), while only 3 percent of misdemeanor convictions get an intermediate sanction at sentencing (compared to 72 percent community). For both felonies and misdemeanors, intensive supervision and special probation are—by far—the intermediate sanctions of choice. (All data are from the latest N.C. Sentencing and Policy Advisory Commission [statistical report](#).)

The Justice Reinvestment Act ([S.L. 2011-192](#)) makes important changes to the definitions of community and intermediate punishment—changes that generally lessen the distinction between the two types of sentences. For “persons placed on probation based on offenses which occur on or after December 1, 2011,” the definition of an intermediate punishment is changed so that the court is no longer *required* to impose any particular conditions to make the sentence intermediate. Rather, the only mandatory component of an intermediate sentence is that the defendant be placed on supervised probation. Aside from that, the law provides that the sentence *may* include drug treatment court, special probation, or one or more of the “community and intermediate probation conditions” set out in new G.S. 15A-1343(a1). I’ll talk more about that group of conditions in a moment. The new intermediate punishment definition makes no mention of residential programs, intensive supervision, or day-reporting centers because the definitions of all of those things are repealed.

Community punishment is still defined by what it isn’t: a sentence to community punishment is one that does not include an active punishment, assignment to a drug treatment court, or special probation. The definition also now provides that community sentences may, like intermediate sentences, include any one or more of the new “community and intermediate probation conditions” set out in new G.S. 15A-1343(a1). As under existing law, community punishment can include supervised probation, unsupervised probation, or a fine only.

The new pool of community and intermediate conditions—available in any Structured Sentencing case but inapplicable to impaired driving sentences—includes the following six conditions:

- (1) House arrest with electronic monitoring;
- (2) Perform community service;
- (3) Submit to a period or periods of confinement for 2 or 3 days in a local confinement facility for a total of no more than six days per month during any three separate months;
- (4) Substance abuse assessment, monitoring, or treatment;
- (5) Participation in an educational or vocational skills development program;

(6) Submission to satellite-based monitoring, if a covered sex offender.

A few of those conditions are very similar to existing statutory special conditions of probation in [G.S. 15A-1343\(b1\)](#). House arrest with electronic monitoring is already described in G.S. 15A-1343(b1)(3c), and community service is already set out in G.S. 15A-1343(b1)(6). (The key difference between the new conditions and the existing ones seems to be that the new ones make no mention of the \$90 fee for the house arrest device or the \$250 community service program fee.) Satellite-based monitoring is already a mandatory condition for covered sex offenders under the special conditions for sex offenders set out in G.S. 15A-1343(b2). The conditions allowing electronic house arrest and short-term jail confinement are noteworthy in that neither condition would heretofore have been permissible for a community punishment; never before would jail time have been permissible in a community case. But now up to 18 days of confinement (served in 2–3 increments as provided in the law) can be ordered at sentencing—assuming, of course, that the defendant’s suspended sentence is at least that long.

The blurring of the line between community and intermediate punishment is an intentional outcome of the Justice Reinvestment Act. As I understand it, there was a sense within the Department of Correction, reinforced by findings from the Council of State Governments (see p. 14 of the report available [here](#)), that scarce correctional resources were not being focused on the offenders who needed them most. Sometimes, for example, judges would sentence low-risk offenders to intermediate sanctions not because they really wanted to, but rather because the law required at least one intermediate condition if the judge wanted to give a probationary sentence to an offender in an “I” or “I/A” cell on the sentencing grid. Under the new law the judge will never be *required* to impose an intermediate sanction. And intensive supervision is altogether removed from the law as a judicially-imposed sentencing option because DOC would prefer to determine supervision contact standards through its risk and needs assessment process, which generally isn’t completed until two months into an offender’s supervision. The overarching goal (I think) is that judges will order a more vanilla form of probation at sentencing, and that DOC will then use delegated authority to shape the sentence in a way that fits the offender’s risk and needs.

Under existing law, you could always tell if a sentence was community punishment or intermediate punishment. If the sentence included one of the intermediate conditions, it was intermediate; if it didn’t, it was community. After JRA, it will not always be possible to tell. For example, a sentence to supervised probation with electronic house arrest (or any other condition from the pool of “community and intermediate probation conditions”) could be either community punishment or intermediate punishment. I can think of at least a few reasons why the distinction still matters. First, whether it’s community or intermediate punishment dictates how long the period of probation can be (without findings that a longer or shorter period is required) under [G.S. 15A-1343.2\(d\)](#). Second, under G.S. 15A-1343(b4), four additional conditions of probation apply to any defendant subject to intermediate punishment (perform community service if required; not use, possess, or control alcohol; remain within the county; and participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer). Third, whether the sentence is community or intermediate punishment has a slight bearing on conditions a probation officer can add through delegated authority. Given those differences, judges should be sure to note on the judgment whether an ambiguous sentence is a community or intermediate punishment.