

# Intermediate Probation Conditions

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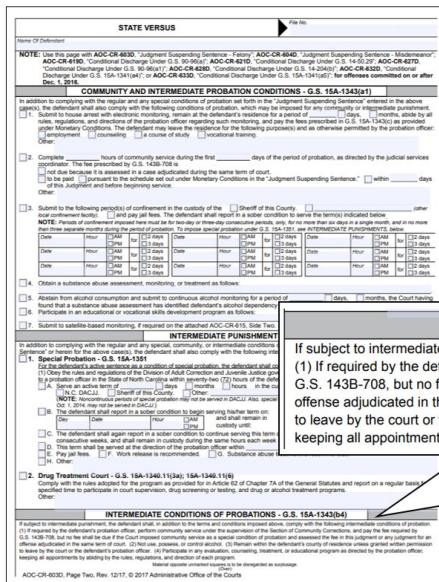
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I have been asked a few times lately which conditions of probation are “intermediate” conditions of probation. It turns out to be a little bit complicated.

**Intermediate conditions.** In 2009, effective for offenses committed on or after December 1, 2009, the General Assembly added four conditions of probation that were styled as “Intermediate Conditions.” [S.L. 2009-372](#). Those conditions, set out in G.S. 15A-1343(b4), are:

1. If required in the discretion of the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice and pay the fee required by G.S. 143B-708.
2. Not use, possess, or control alcohol.
3. Remain within the county of residence unless granted written permission to leave by the court or the defendant's probation officer.
4. Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

The conditions appear at the bottom of Page Two of a probationary judgment form.



The image shows a portion of a legal form titled "STATE VERSUS". It includes a "NOTE" section with various codes like ACC-CR-600, ACC-CR-610, etc. Below that is a section for "COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a)". This section contains several checkboxes and input fields for reporting community service, electronic monitoring, and other conditions. At the bottom of the form, there is a section titled "INTERMEDIATE CONDITIONS OF PROBATIONS - G.S. 15A-1343(b4)" which lists the four conditions mentioned in the text above. A callout box points to this section with the text: "If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. (1) If required by the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections, and pay the fee required by G.S. 143B-708, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program."

The intermediate conditions apply to “each defendant subject to intermediate punishment,” unless the judge specifically exempts the defendant from one or more of them. The statute says that the judge need not state each of the conditions in open court, but the defendant must receive them in writing. In that regard the intermediate conditions

are like four extra “regular” conditions of probation that apply to defendants who are subject to intermediate punishment—seemingly whether that punishment was imposed at sentencing or added later as a modification of probation.

Other special conditions of probation (like the gang conditions, or a requirement to attend DART Cherry, for example) may be added in an intermediate case, but only the four additional conditions apply automatically. Intermediate punishments also may, in the judge’s discretion, include any of the “community and intermediate probation conditions” listed in G.S. 15A-1343(a1), but we don’t even really need to talk about those for the purpose of today’s post.

So the general rule is simple enough: the four intermediate conditions apply automatically to defendants subject to an intermediate punishment. **But what is an intermediate punishment?**

Effective for offenses committed on or after December 1, 2011, an intermediate punishment is defined as a sentence under Structured Sentencing (which is pretty much anything aside from DWI) that places a defendant on supervised probation and *may* include drug treatment court or special probation (a split sentence). G.S. 15A-1340.11(6). Before that effective date, an intermediate punishment was defined as supervised probation that was *required* to include at least one of six specified conditions (intensive supervision, a split sentence, electronic house arrest, a residential program, day-reporting center, or drug treatment court), and any term of probation that did not include at least one of those conditions was, by definition, community punishment. Under the revised definition, cases that include a split sentence or drug treatment court are clearly intermediate punishment, but there are many sentences imposed under the new definition that do not include either a split or drug treatment court that are also intermediate.

If that sounds a little confusing, it’s because it is. And to make matters worse, nearly a decade after the definitional change, the court system’s computers don’t seem to always recognize the distinction between community and intermediate punishment. In Fiscal Year 2018, 3,995 out of 8,464 sentences (47 percent) identified as “community” came from sentencing grid cells in which a community punishment is not allowed because there is no “C” in the cell. I noted the issue in [this prior post](#), and the Court of Appeals picked up on it in a footnote in *State v. Duff*, 825 S.E.2d 277 (2019) (unpublished).

As to the intermediate conditions themselves, they can be significant. One that catches some probationers by surprise (remember, the judge need not say it aloud in court) is the condition forbidding the use, possession, or control of alcohol. It applies to any probationer sentenced under Structured Sentencing—felon or misdemeanor—who receives an intermediate punishment, regardless of whether the crime had anything to do with alcohol or other substance abuse. The first and fourth intermediate conditions (perform community service if required by the probation officer; and participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer) are functionally similar to conditions an officer can add through delegated authority under G.S. 15A-1343.2 (i.e., perform up to 50 hours of community service, and participate in an educational or vocational skills development program), although unlike delegated authority the intermediate conditions do not include a provision allowing for judicial review of officer-imposed requirements.

Given the potential impact of the intermediate conditions, it important to be clear about when they apply. If a judgment is misidentified as community punishment when it ought (by law) to be intermediate punishment, the probation officer and probationer may not know that the four intermediate conditions are supposed to be in effect. With that in mind, I encourage judges to be sure that the large check-boxes at the top of any suspended sentence judgment form properly categorize the type of punishment (community or intermediate) that the judgment imposes.

**STATE OF NORTH CAROLINA**

County \_\_\_\_\_ Seat of Court \_\_\_\_\_ In The General Court Of Justice  
 NOTE: [Use AOC-CR-319 for DWI offenses.]  District  Superior Court Division

**STATE VERSUS** **JUDGMENT SUSPENDING SENTENCE - FELONY**  
**PUNISHMENT:  COMMUNITY  INTERMEDIATE**  
**(STRUCTURED SENTENCING)**  
**(For Offenses Committed On Or After Dec. 1, 2016)**

Name Of Defendant \_\_\_\_\_  
 Race \_\_\_\_\_ Sex \_\_\_\_\_ Date Of Birth \_\_\_\_\_  
 Attorney For State  Found  Not Indigent  Attorney  Defendant  Retained  Approved  CR-602.215

The defendant was found guilty/responsible, pursuant to  plea  pursuant to Afford  of no contest  trial by judge  trial by jury of \_\_\_\_\_  
 File No. (s) Off. Offense Description Offense Date G.S. No. F/W Cl. Thru Ct.

NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enforcement).  
 The Court  has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be \_\_\_\_\_ REC  
 Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the LEV  
 trial of fact beyond a reasonable doubt or the defendant's admission to this issue.  
 makes no prior record level finding because none is required.

The Court (NOTE: check 1 or 2 AOC217 as checked):  
 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under  
 2. makes the Determination of Aggravating and Mitigating Factors on the attached AOC-CR-605.  
 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-605.  
 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-55(h)(5).  
 5. adjudges the defendant to be (check only one)  a habitual felon to be sentenced four classes higher than the principal  a habitual breaker and entering status offender, to be sentenced as a Class E felon.  
 6. finds enhancement pursuant to:  G.S. 90-95(e)(3) (drug)  G.S. 14-31c (hate crime)  G.S. 50B-4.1 (domestic violence)  
 G.S. 14-50.22 (gang misdemeanor)  Other \_\_\_\_\_  
 7. based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission, finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.8 and therefore imposes the special is for on the attached AOC-CR-603D, Page Two, Side Two, and makes the additional findings and orders on the attached  (if no. 7 not found and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D,  if  (if no. 7 not found and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D,  if  finds that a  motor vehicle  commercial motor vehicle was used in the commission of the offense and that it  10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant  as defined by G.S. 50B-1(b) with the victim.  
 11. offense committed on or after Dec. 1, 2017, only finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2)  and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.  
 12. finds the above-designated offense(s) involved (check one)  offense committed Dec. 1, 2016 - Nov. 30, 2017 criminal street gang activity  offense committed on or after Dec. 1, 2017 criminal gang activity G.S. 14-50.25.  
 13. did not grant a conditional discharge under G.S. 90-56(a) because (check all that apply)  the defendant refused to consent.  the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.  
 14. finds that the defendant used or displayed a firearm while committing the felony G.S. 15A-1382.2.  
 15. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor G.S. 15A-1382.1(a)(1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned  
 for a minimum term of \_\_\_\_\_ months for a maximum term of \_\_\_\_\_ months in the custody of the N.C. DACJJ.  
 This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_  
 The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the \_\_\_\_\_ sentence imposed above.  imprisonment required for special probation set forth on AOC-CR-603D, Page Two.

**SUSPENSION OF SENTENCE**  
 Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for \_\_\_\_\_ months.  
 1. The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).  
 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.  
 3. This period of probation shall begin  when the defendant is released from incarceration  at the expiration of the sentence in the case below.  
 File No. \_\_\_\_\_ Offense \_\_\_\_\_ County \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_  
 4. The defendant shall comply with the conditions set forth in file number \_\_\_\_\_  
 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

**MONETARY CONDITIONS**  
 The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows:

Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Asst Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$	\$	\$

\*See attached Restitution Worksheet, Notice And Order (Initial Sentencing) AOC-CR-611, which is incorporated by reference.  
 The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_  
 Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.  
 (Please separate unnumbered items to be distributed as subpage.)  
 AOC-CR-603D, Rev. 12/17, © 2017 Administrative Office of the Courts

**JUDGMENT SUSPENDING SENTENCE - FELONY**  
**PUNISHMENT:  COMMUNITY  INTERMEDIATE**  
**(STRUCTURED SENTENCING)**  
**(For Offenses Committed On Or After Dec. 1, 2016)**  
 G.S. 15A-1341, -1342, -1343, -1343.2, -1346