

## Jail Credit Basics

**Author :** Jamie Markham

**Categories :** [Sentencing](#), [Uncategorized](#)

**Tagged as :** [jail credit](#)

**Date :** October 26, 2017

I get at least one jail credit question almost every day. How jail credit is tabulated and applied can be as important as the sentence itself in determining how long a person will be behind bars. Today's post covers the basics, which are sometimes misunderstood.

**A defendant must receive his or her jail credit.** The 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." [G.S. 15-196.1](#). If applicable credit is not awarded the first time around, the defendant could pursue it under [G.S. 15-196.4](#) through a petition for credit not previously allowed. Use form [AOC-CR-906M](#).

**The judge presiding determines the credit.** "Upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled." G.S. 15-196.4.

**Jail credit is subtracted from both the minimum and maximum sentence.** That is true by statute, G.S. 15-196.1 ("The minimum and maximum term of a sentence shall be credited . . ."), and also makes conceptual sense. If you have a 6–17 month sentence and you've served two months of it in jail, then you have a 4–15 month sentence left to serve. You are two months closer to both benchmarks by virtue of your pretrial credit, and so they are both reduced.

**How do you tabulate the days?** Most people count the days of credit by counting the first day of pretrial confinement and excluding the last day (the day of sentencing), on the theory that the latter is actually the first day of the sentence itself. I wrote about how to count the days [here](#). Computers are good at counting days; you could subtract one date from another using an Excel spreadsheet, or use one of the many websites that can help you calculate the number of days between two dates (e.g., [timeanddate.com](#)). If want to go old-school, you could use a [Julian date calendar](#) like I did back when I was in the military.

**Nowadays, credit is incident based, not necessarily charge based.** Under legislative changes made in 2015, described [here](#), a defendant must receive credit for all confinement "as a result of the charge that culminated in the sentence or the incident from which the charge arose." G.S. 15-196.1. The revised statute requires crediting of time confined on a charge even when the person is convicted of a different charge that is not a lesser included offense, so long as the charge and conviction are part of the same incident. For example, a person charged with rape but convicted of indecent liberties with a child must get credit for the time spent confined on the rape.

**A defendant doesn't get jail credit toward a new charge when he or she is already serving time on another sentence.** G.S. 15-196.1 says no credit applies to a pending charge for a defendant who is "serving a sentence imposed for another offense." A person arrested on an alleged probation violation and awaiting a violation hearing is not "serving a sentence" within the meaning of that law, and so he or she could get credit for overlapping prehearing confinement and pretrial confinement on a new criminal charge, assuming the activated sentence and new sentence run concurrently. By contrast, DAC takes the position that a person arrested on an alleged violation of post-release supervision is "serving a sentence," and so should not receive credit toward any other pending charge during that confinement (which could be lengthy given the rule against bail for pending PRS violations). It's a defensible distinction

given that G.S. 15A-1368.6 describes the arrest as a “conditional revocation,” but that interpretation hasn’t yet been tested in the appellate division.

**For what things does a person get jail credit?** All time spent in “any State or local correctional, mental or other institution,” G.S. 15-196.1, which includes the following:

- Pretrial confinement and time spent in confinement awaiting a probation violation hearing. G.S. 15-196.1.
- The active portion of a split sentence. *State v. Farris*, 336 N.C. 552 (1994).
- Time spent at DART Cherry as a condition of probation, *State v. Lutz*, 177 N.C. App. 140 (2006), and presumably at the Black Mountain Substance Abuse Treatment Center, which is the analogous program for women.
- Presentence commitment for study. *State v. Powell*, 11 N.C. App. 194 (1971).
- Hospitalization to determine competency to stand trial. *State v. Lewis*, 18 N.C. App. 681 (1973).
- Time spent in confinement in another state awaiting extradition if the defendant was held in the other state solely on North Carolina’s behalf. *Childers v. Laws*, 558 F. Supp. 1284 (W.D.N.C. 1983).
- Time spent imprisoned for contempt under G.S. 15A-1344(e1). *State v. Belcher*, 173 N.C. App. 620 (2005).
- Time imprisoned as confinement in response to violation (CRV), G.S. 15A-1344(d2), although note the special rule for crediting concurrent CRV periods against consecutive sentences, described [here](#).
- Time imprisoned as a “quick dip” under G.S. 15A-1343(a1)(3) or -1343.2.
- In DWI cases, time spent as an inpatient at a state-operated or state-licensed treatment facility for the treatment of alcoholism or substance abuse, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. G.S. 20-179(k1).

**For what things does a person not get credit?**

- Electronic house arrest. *State v. Jarman*, 140 N.C. App. 198 (2000).
- In a non-DWI case, time spent at a privately run residential treatment program. *State v. Stephenson*, 213 N.C. App. 621 (2011).

**How is credit applied to concurrent sentences?** When a defendant is held on multiple charges that wind up sentenced to run concurrently, each sentence is credited with so much of the time as was spent in custody due to the offense resulting in the sentence. G.S. 15-196.2. In other words, every sentence gets all of its credit, even if the pretrial confinement was due to overlapping charges. Here are some examples.

*Example 1.* A defendant is arrested on Charge A and Charge B on 10/1/2017. He is not released on pretrial release. He is sentenced for both charges on 10/11/2017, with Sentences A and B allowed to run concurrently. The court must apply 10 days of jail credit to each sentence.

*Example 2.* A defendant is arrested on Charge A on 10/1/2017. He is not release on pretrial release. On 10/11/2017 he is served with Charge B. He is not released. He is sentenced for both charges on 10/21/2017, with Sentence A and Sentence B running concurrently. The court must apply 20 days of jail credit to Sentence A (10/1–10/21) and 10 days of jail credit to Sentence B (10/11–10/21).

Let me change the facts of Example 2 a little. Suppose for some reason Sentence B (an active sentence to 100 days) was imposed 10/21/2017, but Sentence A did not get imposed until 10/31/2017. Sentence A is allowed to run concurrently with previously imposed Sentence B. How much credit would be applied in each case then?

Sentence B clearly would get credit from 10/11 to 10/21: 10 days.

Sentence A would get credit from 10/1 to 10/21: 20 days. No credit is awarded for the days from 10/21 to 10/31, because on those days the defendant was already “serving a sentence imposed for another offense” (Sentence B).

But what about those days from 10/11 to 10/21? Some would say credit for those days should not be applied to Sentence A because it was “used up” when it was previously applied to Sentence B. That is incorrect. Under a legislative amendment made in 2015, described [here](#), there should no longer be any sense that jail credit applicable to one sentence is “used up” when it is applied to another. In my view (expressed [here](#) back in 2013) that has always been the law, but I think it’s even clearer after the 2015 revision. If the sentences wind up running concurrently, shared pretrial confinement must be applied to both of them even if they are sentenced at different times.

**How is credit applied to consecutive sentences?** When a defendant receives consecutive sentences, pretrial credit attributable to multiple charges may be applied to only one of the sentences—it “shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned.” G.S. 15-196.2.

*Example 3.* A defendant is arrested on Charge A and Charge B on 10/1/2017. He is not released on pretrial release. He is sentenced for both charges on 10/11/2017, with Sentences A and B (each 90 days, let’s say) set to run *consecutively*. How should jail credit apply? The shared 10 days may apply to only one of the sentences—typically to the first one in the consecutive string.

Suppose the defendant were held so long pretrial on both charges that he had jail credit in excess of the sentence imposed for Sentence A. In that case, the court would be correct to apply the *remainder* credit to Sentence B. For a discussion of how DAC might roll surplus credit over from one sentence to the next on its own, see [this prior post](#).

Remember that the rule for applying jail credit to only one sentence in a string of consecutive judgments applies only to *shared* pretrial confinement. If the pretrial confinement for multiple charges occurred during different, non-overlapping time windows, then the court must apply that credit to each sentence. For example, suppose a defendant is arrested on Charge A on 10/1/2017, and eventually released on pretrial release on 10/11. He is arrested on Charge B on 10/21, and released on pretrial release on that charge on 10/31. If he is convicted and the sentences are run consecutively, how much credit is applied to each? It is 10 days to Sentence A (10/1–10/11) and 10 days to Sentence B (10/21–10/31). There is no bar against applying credit to both sentences when the pretrial confinement periods did not overlap.