

## Proper Place of Confinement for a Probation Revocation

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Last year I posted [a chart](#) summarizing the proper place of confinement (jail, prison, or Statewide Misdemeanant Confinement Program) for various types of imprisonment. The chart covers active sentences, split sentences, CRVs, quick dips, and incarceration for nonpayment of a fine. One thing it does not explicitly cover, though, is the proper place of confinement for a sentence activated upon revocation of probation. In response to a flurry of questions, I'll take that issue up today.

When a defendant's sentence is activated upon revocation of probation, where should the sentence be served? Is the proper place of confinement determined by the rules in place when the person was placed on probation, or should the revoking judge update the place of confinement to reflect recent changes to the law?

The answer lies in the effective date of the legislation that most recently changed the place-of-confinement rules. As described in [this prior post](#), [S.L. 2014-100](#) expanded the Statewide Misdemeanant Confinement Program (SMCP) to include Structured Sentencing misdemeanors in excess of 180 days, and all active sentences for DWI regardless of length.

Those changes were made effective as follows. The Structured Sentencing changes kicked in for "persons placed on probation or sentenced to imprisonment" on or after October 1, 2014. The DWI changes were made effective for "persons placed on probation or sentenced to imprisonment for impaired driving under G.S. 20-138.1 on or after January 1, 2015." S.L. 2014-100, § 16C.1.(g).

I read those effective dates to apply to new sentences imposed on or after October 1, 2014, and January 1, 2015, respectively. I think the effective date mentions persons "placed on probation" and "sentenced to imprisonment" separately to cover the waterfront of sentence types (suspended or active) a person might receive on or after each triggering date.

I do not read the change to reach back to defendants placed on probation before the effective date but revoked after it. A probationer is "sentenced to imprisonment" when he or she is initially sentenced. See [G.S. 15A-1340.13\(c\)](#) and (f) ("The judgment of the court *shall contain a minimum term of imprisonment . . .*," and "[t]he court shall suspend the sentence of imprisonment if the class of offense and prior record level require community or intermediate punishment as a sentence disposition"); [G.S. 20-179\(g\)](#) ("A defendant . . . *shall be sentenced to a term of imprisonment . . .* [which] may be suspended . . ."). That's why even the suspended sentence judgment forms have a place-of-confinement check-box. In general, activation of that term of imprisonment upon revocation is not imposition of a new sentence of imprisonment; it's just activation of the term already imposed.

The particular issue people have asked me about lately is DWI defendants placed on probation before January 1, 2015, but revoked on or after that date. Should they be committed to the SMCP or to the place of confinement indicated on the judgment suspending sentence? In my opinion, the latter. Neither part of the effective date discussed above applies to them. Obviously they were not "placed on probation" on or after January 1. And given my understanding of what it means for a sentence of imprisonment to be "imposed," that portion of the effective date

doesn't apply to them either. So they should be committed to the custodian identified in the original judgment, which will be either DAC or the local jail, depending on the length of the term of imprisonment and the defendant's history of Chapter 20 offenses. See former G.S. 20-176(c1).

A possible exception to that rule might apply when the judge modifies a defendant's suspended sentence upon revocation of probation. [G.S. 15A-1344\(d\)](#) ("The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence . . ."). Arguably, a modified term of imprisonment is "imposed" in a way that would trigger the effective date, thus requiring it to be served according to the new place-of-confinement rules.

As always, this is just [my opinion](#). If a custodian thinks a court has identified an improper place of confinement in its judgment, the proper course of action would be to inform the court of the purported error, as described [here](#).