

Terminal CRVs

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The Justice Reinvestment Act created confinement in response to violation (CRV) as an alternative to revocation for technical violations (violations other than a new criminal offense or absconding). The theory was that CRV would serve as a temporary intervention for technical violations (90 days for a felony or up to 90 days for a misdemeanor), after which the offending probationer would return to supervision to finish his or her period of probation in the community. It doesn't always happen that way. Many CRVs are "terminal," in the sense that they are the last thing that happens in the probation case. Today's post summarizes the different types of terminal CRVs.

In my view there are three types of "terminal CRVs."

The first type of terminal CRV is one that uses up the remainder of a defendant's suspended term of imprisonment. For example, when a misdemeanor probationer with a 45-day suspended sentence receives a 45-day CRV, that is a terminal CRV. Even if there were many months remaining on the period of probation when the court ordered the CRV, its completion would bring about the end of the case, because there can be no further probation supervision when there is no sentence left to suspend. In that regard, this type of terminal CRV is the functional equivalent of a revocation.

Obviously this type of terminal CRV is much more likely to arise in a misdemeanor case than a felony case. Felony maximum sentences are long enough that a 90-day intervention is unlikely to use up even the shortest felony suspended sentence. But for misdemeanor sentences—the vast majority of which are under 90 days—CRV was never a good fit. In fact, so common was the terminal CRV for misdemeanants (over half of them were terminal in 2016 according to [data from the N.C. Sentencing and Policy Advisory Commission](#)) that the legislature repealed CRV for Structured Sentencing misdemeanants, effective for persons placed on probation on or after December 1, 2015 (details [here](#)). For misdemeanants placed on probation after that date, CRV is not an option, and so there will be no more terminal CRVs for them.

I have heard people argue that this type of terminal CRV ought to include a felon whose CRV carries him beyond the point where he would be due for release to post-release supervision had the sentence been active. For instance, suppose a defendant with a 4-14 month sentence and one prior 90-day CRV was ordered to a second 90-day CRV. Is his suspended sentence "used up" when he gets to the point where he has 5 months of jail credit, given that the last 9 months of the maximum are actually for post-release supervision? In my opinion, no, for the reasons described in [this prior post](#). I think the person should return to probation unless the full maximum has been served—but everyone should be aware that any subsequent "revocation" will actually result in an immediate release to post-release supervision.

The second type of terminal CRV is one where the defendant's period of probation expires during his or her service of the CRV. For example, a defendant with a 36-month period of probation ordered at the 35-month point of the supervision period to a 90-day CRV would have a terminal CRV, because probation will expire before the CRV is complete. Sometimes probation will have expired even before the CRV is ordered. When a violation report is filed before probation expires, the court has jurisdiction to act on the case under G.S. 15A-1344(f). If the court orders CRV in that post-expiration period, the CRV will be terminal. (I suppose there is some argument that G.S. 15A-1344(f) does not empower the court to order CRV at all, because it mentions only extension, modification, or revocation.)

Six years into Justice Reinvestment, we still don't have any appellate cases examining whether CRV confinement may permissibly extend beyond the expiration of the defendant's period of probation. The special probation statute expressly forbids a split sentence from extending beyond a defendant's period of probation. G.S. 15A-1344(e) ("No confinement other than an activated suspended sentence may be required beyond the period of probation . . ."). The CRV statute, G.S. 15A-1344(d2), does not say anything about it one way or the other, but to the extent that we conceptualize it as a modification of probation, it seems like there's at least an argument that it should end when probation does. (If that were the case, it would mean our 90-day CRV ordered at the 35-month point of a 36-month probation would stop after 30 days.) Corrections does not see it that way, and will carry out a full CRV even if probation expires in the middle of it.

The final type of terminal CRV isn't a "natural" termination like type 1 (run out of suspended sentence) or type 2 (run out of probation period). It is, rather, a CRV followed by an affirmative termination by the judge. In fact, Community Corrections does not record these as terminal CRVs, but puts them in a separate category called CRV-and-terminate. According to the Sentencing Commission, courts entered a CRV-and-terminate 12 percent of the time in felony cases and 17 percent of the time for misdemeanors.

As a matter of training and departmental guidance, probation officers are discouraged from recommending a CRV-and-terminate. The felony CRV centers in particular are meant to be a temporary intervention where a probationer receives intensive behavior modification programming and then returns to supervision in the community. They are not generally intended as a place of confinement for a de facto "revocation-light" that winds up being the last action in the case.