

PROBATION VIOLATIONS

September 2017

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- **Notice**

- A probationer is entitled to at least 24 hours' notice of any alleged violation of probation. G.S. 15A-1345(e). That notice usually comes via a probation violation report:
 - *Supervised probation*: DCC-10 filed by probation officer.
 - *Unsupervised*: AOC-CR-220, Notice of Hearing on Violation of Unsupervised Probation.
- To be eligible for revocation, the defendant must receive notice of a revocation-eligible violation. *State v. Lee*, 232 N.C. App. 256 (2014) (holding that violation report listing charges pending against the defendant was sufficient to put him on notice of a "commit no criminal offense" violation).

- **Jurisdiction/Timing**

- In general, a judge has power to act on a probation matter at any time before probation expires.
- The court may act after expiration if a violation report was filed (and file stamped) before the case expired. G.S. 15A-1344(f).
- If an earlier extension was improper and probation would have expired without it, the court lacks jurisdiction to act on the case now. *E.g.*, *State v. Gorman*, 221 N.C. App. 330 (2012).

- **Bail**

- The prehearing release options for a probationer arrested for an alleged violation are generally the same as pretrial release for a criminal charge.
- If a probationer arrested for an alleged violation also has a pending felony charge or has ever been convicted of a reportable sex crime, the judicial official shall determine whether the probationer poses a danger to the public before imposing conditions of release.
 - If the probationer is deemed dangerous, he or she shall be denied release.
 - If the probationer is not dangerous, conditions of release shall be imposed as usual.
 - If dangerousness cannot be determined, the probationer may be detained for up to seven days to obtain sufficient information.
 - After seven days, if no determination has been made, release conditions shall be imposed as usual. G.S. 15A-1345(b1); AOC-CR-272.

- **Preliminary Hearing**

- A probationer detained for a probation violation is entitled to a preliminary hearing on the violation within seven working days of his or her arrest, unless the probationer waives it or the final violation hearing is held first.
- If no preliminary hearing is held within seven working days, the probationer must be released pending a hearing. G.S. 15A-1345(c)-(d).

- **Final Hearing**

- Venue: Probation violations may be heard in the district where:
 - probation was imposed,
 - the alleged violation took place, or
 - the probationer currently resides. G.S. 15A-1344(a).
 - A court on its own motion may return a probationer to the district where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation. G.S. 15A-1344(c).
- Confrontation: A probationer may confront and cross-examine witnesses, unless the court finds good cause for not allowing confrontation.
- Counsel: A probationer has a right to counsel for a violation hearing. The court must comply with G.S. 15A-1242 when accepting a waiver of the right to counsel for a violation hearing.
- Evidence:
 - The rules of evidence do not apply at a violation hearing.
 - Hearsay is admissible. *State v. Murchison*, 367 N.C. 461 (2014).
 - The exclusionary rule does not apply. *State v. Lombardo*, 74 N.C. App. 460 (1985).
- Standard of proof: The State must present evidence proving to the judge's *reasonable satisfaction* that the probationer willfully violated a valid condition of probation.
- Willfulness:
 - The probationer may offer evidence that a violation was not willful. If the probationer offers such evidence, the court must consider it and make written findings of fact clearly showing that it was considered.
 - If the alleged violation concerned the nonpayment of a monetary obligation, the defendant must be given an opportunity to show that the nonpayment was attributable to a good faith inability to pay.
- Class H and I felonies pled in district court: By default, probation violation hearings for felony defendants who pled guilty in district court are in *superior court*. Hearings may be held in district court with the consent of the State and the defendant. G.S. 7A-271(e).

- **Appeals**

- A probationer may appeal to superior court for a de novo violation hearing if a district court judge revokes probation or imposes special probation.
- There is no right to appeal other modifications of probation, including imposition of a period of confinement in response to violation (CRV). *State v. Romero*, 228 N.C. App. 348 (2013).
- There is no right to a de novo hearing in superior court if the defendant waived his or her right to a hearing in district court. G.S. 15A-1347.
- Appeal of a violation hearing held in district court for a Class H or I felony pled in district court is to superior court for a de novo hearing. *State v. Hooper*, 358 N.C. 122 (2004).

Probation Response Options

	Felony	Non-DWI Misdemeanor Placed On Probation		DWI	Notes
		Before 12/1/15	On/After 12/1/15		
REVOCAION G.S. 15A-1345	Permissible in response to: • New criminal offense • Absconding • Any violation after two prior CRV	Permissible in response to: • New criminal offense • Absconding • Any violation after two prior CRV	Permissible in response to: • New criminal offense • Absconding • Any violation after two prior QUICK DIPS imposed in response to technical violations, either by judge or by probation officer	Permissible in response to: • New criminal offense • Absconding • Any violation after two prior CRV	<ul style="list-style-type: none"> No revocation solely for conviction of a Class 3 misdemeanor. G.S. 15A-1344(d) Deferred prosecution and conditional discharge probation may be revoked for any violation
CONFINEMENT IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1344(d2)	For violations other than: • New criminal offense • Absconding <i>90 days¹</i>	For violations other than: • New criminal offense • Absconding <i>Up to 90 days</i>	N/A	For violations other than: • New criminal offense • Absconding <i>Up to 90 days</i>	<ul style="list-style-type: none"> Must be served continuously (no "weekend CRV") Will not be reduced by earned time/good time CRV periods must run concurrently with one another Max of two CRV in any case
QUICK DIP G.S. 15A-1343(a1)(3) G.S. 15A-1344(d2)	For any violation <i>2 or 3 days</i>	For any violation <i>2 or 3 days</i>	For any violation <i>2 or 3 days</i>	N/A	<ul style="list-style-type: none"> No more than 6 quick dip days per month Used in no more than three separate calendar months
SPECIAL PROBATION (SPLIT) G.S. 15A-1344(e)	For any violation <i>Up to ¼ the maximum imposed sentence</i>	For any violation <i>Up to ¼ the maximum imposed sentence</i>	For any violation <i>Up to ¼ the maximum imposed sentence</i>	For any violation <i>Up to ¼ the maximum penalty allowed by law</i>	May be served in noncontinuous intervals in the Jail
CONTEMPT G.S. 15A-1344(e1)	Permissible in response to any violation <i>Up to 30 days</i>				<ul style="list-style-type: none"> Must be proved beyond a reasonable doubt Counts for credit against suspended sentence
EXTENSION G.S. 15A-1344(d) G.S. 15A-1342(a) G.S. 15A-1343.2(d)	<p>Ordinary: Up to 5-year maximum. Permissible at any time after notice and hearing and for good cause shown.</p> <p>Special purpose: By up to 3 years beyond the original period if: (1) Probationer consents; (2) During last 6 months of original period; and (3) To complete restitution or med/psych treatment</p>				The ordinary maximum period of probation in deferred prosecution and conditional discharge cases is two years
MODIFICATION G.S. 15A-1344(d)	Permissible at any time after notice and hearing and for good cause shown				
TRANSFER TO UNSUPERVISED	At any time (except sex offenders)	At any time (except sex offenders)	At any time (except sex offenders)	At any time ²	The court may authorize a probation officer to transfer a person to unsupervised probation after all money is paid to the clerk. G.S. 15A-1343(g).
TERMINATE G.S. 15A-1342(b)	At any time				No statute defines an "unsuccessful" termination
CONTINUE WITHOUT MODIFICATION	At any time				

1. For violations on/after 10/1/2014, CRV may not be reduced by prior jail credit.

2. The judge shall authorize a probation officer to transfer a defendant to unsupervised probation upon completion of community service or payment of any fines, costs, and fees. G.S. 20-179(r).