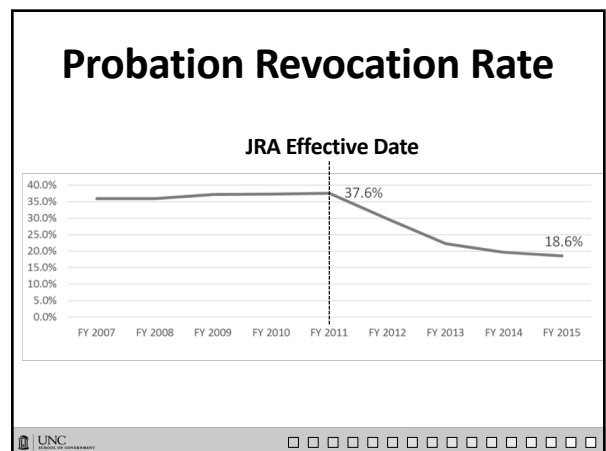
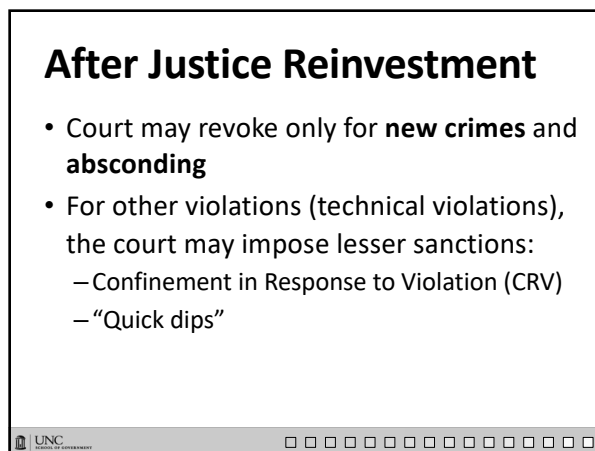
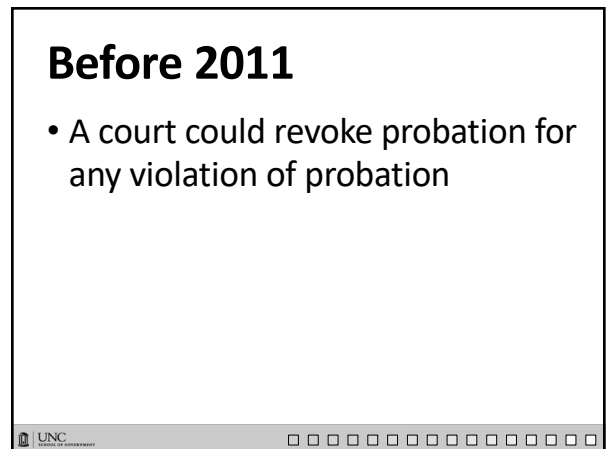


	Before 12/1/11	On/After 12/1/11	CRV	CRV
REVOCATION G.S. 15A-1341	Revocation is required for any violation after 12/1/11.	Revocation is required for any violation after 12/1/11.	Revocation is required for any violation after 12/1/11.	Revocation is required for any violation after 12/1/11.
CONFINEMENT IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1342	For any violation other than a technical violation, the court may impose a term of confinement in response to violation.	For any violation other than a technical violation, the court may impose a term of confinement in response to violation.	For any violation other than a technical violation, the court may impose a term of confinement in response to violation.	For any violation other than a technical violation, the court may impose a term of confinement in response to violation.
QUICK DIP G.S. 15A-1343	For any violation other than a technical violation, the court may impose a quick dip.	For any violation other than a technical violation, the court may impose a quick dip.	For any violation other than a technical violation, the court may impose a quick dip.	For any violation other than a technical violation, the court may impose a quick dip.
SPECIAL PROBATION G.S. 15A-1344	For any violation other than a technical violation, the court may impose special probation.	For any violation other than a technical violation, the court may impose special probation.	For any violation other than a technical violation, the court may impose special probation.	For any violation other than a technical violation, the court may impose special probation.
CONFINEMENT G.S. 15A-1345	For any violation other than a technical violation, the court may impose confinement.	For any violation other than a technical violation, the court may impose confinement.	For any violation other than a technical violation, the court may impose confinement.	For any violation other than a technical violation, the court may impose confinement.
EXTENSION G.S. 15A-1346	For any violation other than a technical violation, the court may extend the term of probation.	For any violation other than a technical violation, the court may extend the term of probation.	For any violation other than a technical violation, the court may extend the term of probation.	For any violation other than a technical violation, the court may extend the term of probation.
REINVESTMENT G.S. 15A-1347	For any violation other than a technical violation, the court may reinvest the term of probation.	For any violation other than a technical violation, the court may reinvest the term of probation.	For any violation other than a technical violation, the court may reinvest the term of probation.	For any violation other than a technical violation, the court may reinvest the term of probation.
TRANSFER TO SUPERVISION G.S. 15A-1348	For any violation other than a technical violation, the court may transfer the probationer to supervision.	For any violation other than a technical violation, the court may transfer the probationer to supervision.	For any violation other than a technical violation, the court may transfer the probationer to supervision.	For any violation other than a technical violation, the court may transfer the probationer to supervision.
TERMINATION G.S. 15A-1349	For any violation other than a technical violation, the court may terminate the probation.	For any violation other than a technical violation, the court may terminate the probation.	For any violation other than a technical violation, the court may terminate the probation.	For any violation other than a technical violation, the court may terminate the probation.
MODIFICATION G.S. 15A-1350	For any violation other than a technical violation, the court may modify the probation.	For any violation other than a technical violation, the court may modify the probation.	For any violation other than a technical violation, the court may modify the probation.	For any violation other than a technical violation, the court may modify the probation.



Violation Hearing Procedure

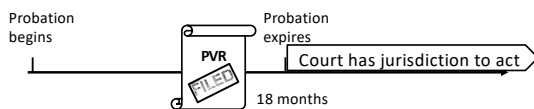
Initiating a Violation

- Supervised probation:
Probation Violation Report (DCC-10)
- Unsupervised probation:
AOC-CR-220
- Probationer is entitled to 24 hours notice of alleged violations

The image shows two forms. The top form is the DCC-10 Probation Violation Report, which includes fields for the State of North Carolina, County, and various case details. The bottom form is the AOC-CR-220 Notice of Hearing for Violation of Unsupervised Probation, which includes fields for the State of North Carolina, County, and various case details.

Jurisdiction

- The court may act... "[a]t any time prior to the expiration or termination of the probation period." G.S. 15A-1344(d).
- Court may also act after expiration if violation report filed (and file stamped) before probation ends. G.S. 15A-1344(f).



Arrest and Bail (p. 6-7)

- Probationers can be arrested for a violation
- Generally entitled to bail
- Exceptions for "dangerous" probationers:
 - With felony charges pending, or
 - Ever convicted of a sex crime
- No statutory authorization for anticipatory bonds
 - "Arrest on first positive drug screen. \$50,000 bond."
 - "Hold without bond"
 - Court of Appeals has "urged caution" against that practice. State v. Hilbert, 145 N.C. App. 440 (2001)

Preliminary Hearings

- Required under G.S. 15A-1345(c)
 - Within 7 working days of arrest
 - Required only if probationer is detained
- If not held within 7 working days, probationer must be released pending final violation hearing

Final Violation Hearings

- Proper venue:
 - Where probation imposed
 - Where violation occurred
 - Where probationer resides
- Court may return the case to district of origin or residence

New criminal offense (p. 19)

- “Commit no criminal offense in any jurisdiction”
 - **Conviction** for new offense
 - **Independent findings** of criminal offense at probation violation hearing
- No revocation solely for Class 3 misdemeanor



Absconding (p. 21)

“Not abscond by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.”

G.S. 15A-1343(b)(3a)



Absconding

- More than merely failing to report
- More than merely failing to remain within the jurisdiction
- Facts supporting absconding:
 - Long absence from residence
 - Repeated attempts by officer to contact
 - Probationer knows officer is looking for him or her and still doesn't respond



Upon Revocation... (p. 18)

- The judge may reduce the sentence within the same range in the same grid cell
- Judge may allow consecutive suspended sentences to run concurrently

[illegible]

Confinement in Response to Violation (CRV) (p. 23)

- Permissible in response to violations other than “commit no criminal offense” and “absconding”
- Length:
 - Felony: 90 days
 - DWI: Up to 90 days
 - Pre-12/1/15 misdemeanor: Up to 90 days
- CRV **repealed** for misdemeanants placed on probation on/after 12/1/15



CRV (cont.)

- Must be continuous period (no “weekend CRV”)
- Must be to proper place of confinement
 - Local jail or SMCP for misdemeanors
 - SMCP for DWI
 - DACJJ for felonies
 - Not DART-Cherry or Black Mountain
- CRV periods ordered in multiple probation cases must run concurrently
- Maximum of 2 CRVs per case



“Terminal CRV”

- CRV that exhausts the defendant’s suspended sentence
- CRV that runs out the clock on the defendant’s period of probation
- CRV followed by the judge’s affirmative termination of probation



Revocation after CRV

- After two CRVs, felony or DWI probation may be revoked for any subsequent violation



	Failure	Non-Compliance/Refusal to Probation	CRV	Other
REVOCATION G.S. 15A-1302	Permitted to continue on probation • New criminal offense may • Any violation after any prior CRV	Permitted to continue on probation • New criminal offense • Any violation after suspended sentence • Any violation after probation officer's order to show cause for probation • Any violation after probation officer's order to show cause for probation	Permitted to continue on probation • New criminal offense • Any violation after any prior CRV	No revocation shall be ordered if a CRV is ordered. G.S. 15A-1302
CONFINEMENT IN DETENTION G.S. 15A-1302(a)	For violation after probation officer's order to show cause for probation	For violation after probation officer's order to show cause for probation	For violation after probation officer's order to show cause for probation	May be ordered continuously for a period of 30 days, or a period longer than 30 days if the court finds it necessary. G.S. 15A-1302
QUICK DIP G.S. 15A-1302(b)	For any violation	For any violation	For any violation	No more than 6 quick dips may be ordered in any 30-day period. G.S. 15A-1302(b)
PROBATION OFFICER G.S. 15A-1302(c)	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation
CONFINEMENT G.S. 15A-1302(d)	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation
RESCINDANCE G.S. 15A-1302(e)	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation
TERMINATION G.S. 15A-1302(f)	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation	Permitted to continue on probation



Quick Dips

- 2-3 days of jail confinement
 - No more than 6 quick dips days per month
 - Used in no more than three separate calendar months of probation
 - Not permissible in DWI cases
- Quick Dips may be imposed by judge or by probation officer through “delegated authority”



Revocation after Quick Dip

- After two Quick Dips, imposed by judge or by probation officer, misdemeanor probation may be revoked for any subsequent violation



Summary of Revocation Eligibility

- For **new crimes & absconding**
 - Any probationer may be revoked upon first violation
- For **technical violations**, eligible for revocation after:
 - Felony:** Two prior CRVs (90 days)
 - DWI:** Two prior CRVs (up to 90 days)
 - Misdemeanors:** Two prior Quick Dips (2-3 days, imposed by judge or probation officer)

	Felony	New Crime Misdemeanor	Quick Dip	DWI	Notes
REVOCATION G.S. 15A-1342	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	No revocation shall be ordered at a case 1 revocation hearing. G.S. 15A-1342
CONFINEMENT IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1342(b)	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	N/A	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	Must be served continuously for the period of 30 days. Will not be reduced by earned time or credit. Counts for credit against suspended sentence.
QUICK DIP G.S. 15A-1342(c)	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	N/A	For any violation after suspension or after any prior CRV	No more than 30 days. Must be served continuously for the period of 30 days. Will not be reduced by earned time or credit. Counts for credit against suspended sentence.
SPECIAL PROBATION OFFICER G.S. 15A-1342(d)	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	May be served in response to technical violations. G.S. 15A-1342(d)
EXTENSION G.S. 15A-1342(e)	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	The offender requires period of supervision in response to technical violations. G.S. 15A-1342(e)
REINSTATEMENT TO PROBATION G.S. 15A-1342(f)	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	The offender requires period of supervision in response to technical violations. G.S. 15A-1342(f)
TERMINATION G.S. 15A-1342(g)	All any time	All any time	All any time	All any time	No status to follow as technical violations. G.S. 15A-1342(g)

Special Probation (Split)

- May be added in response to any violation
- Maximum term of imprisonment is $\frac{1}{4}$ of imposed suspended sentence
 - DWI: $\frac{1}{4}$ of maximum authorized penalty
- May be served on weekends or other intervals

	Felony	New Crime Misdemeanor	Quick Dip	DWI	Notes
REVOCATION G.S. 15A-1342	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	Permissible in response to: • New criminal offense • Any violation after suspension or after any prior CRV	No revocation shall be ordered at a case 1 revocation hearing. G.S. 15A-1342
CONFINEMENT IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1342(b)	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	N/A	For violations after that: • New criminal offense • Any violation after suspension or after any prior CRV	Must be served continuously for the period of 30 days. Will not be reduced by earned time or credit. Counts for credit against suspended sentence.
QUICK DIP G.S. 15A-1342(c)	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	N/A	For any violation after suspension or after any prior CRV	No more than 30 days. Must be served continuously for the period of 30 days. Will not be reduced by earned time or credit. Counts for credit against suspended sentence.
SPECIAL PROBATION OFFICER G.S. 15A-1342(d)	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	For any violation after suspension or after any prior CRV	May be served in response to technical violations. G.S. 15A-1342(d)
EXTENSION G.S. 15A-1342(e)	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	Challenge to 1 year maximum. Removable at any time after notice and hearing and for good cause shown.	The offender requires period of supervision in response to technical violations. G.S. 15A-1342(e)
REINSTATEMENT TO PROBATION G.S. 15A-1342(f)	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	Removable at any time after notice and hearing and for good cause shown.	The offender requires period of supervision in response to technical violations. G.S. 15A-1342(f)
TERMINATION G.S. 15A-1342(g)	All any time	All any time	All any time	All any time	No status to follow as technical violations. G.S. 15A-1342(g)

Contempt

- Up to 30 days in jail
- Chapter 5A procedures apply
 - Proper notice
 - Proof beyond a reasonable doubt
- Counts for credit against suspended sentence if defendant is later revoked

A defendant was placed on probation for DWI in 2017. The officer alleges the following violation.

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

1. Condition of Probation "Commit no criminal offense in any Jurisdiction" in that
THE DEFENDANT HAS THE FOLLOWING PENDING CHARGES:
ON 10/13/17 THE DEFENDANT WAS CHARGED WITH POSSESSION OF FIREARM BY FELON IN 17CRS705617 IN SAMFON COUNTY. IF THE DEFENDANT IS CONVICTED OF THIS CHARGE IT WILL BE A VIOLATION OF HIS CURRENT PROBATION.

Which responses are permissible?

- ☒ Revocation?
- ☒ CRV?
- ☒ Quick dip?
- ☒ Split?

Probation Response Options				
	Failure	Relapse 12/1/15	Relapse 12/1/15	DM
REVIATION (G.S. 15A-1342)	Permissible to respond to new criminal offense	Permissible to respond to new criminal offense	Permissible to respond to new criminal offense	No restriction other than the restriction of G.S. 15A-1346(b)
COMMITMENT REQUIREMENT (G.S. 15A-1346)	For violations other than new criminal offense	For violations other than new criminal offense	For violations other than new criminal offense	Must be served continuously for period of 30 days
GOOD BEHAVIOR (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
SPECIAL PROBATION (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
CONSENT (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
EXTENSION (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
UNRECORDED (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days

Extending Probation

- Two types: *ordinary* and *special purpose*

Ordinary Extensions

- At any time prior to expiration, for good cause shown, the court may extend probation to the 5-year maximum
 - No violation required
 - Could happen multiple times
 - By policy, Probation no longer seeks extensions out of court

Special Purpose Extensions

- Extension by up to 3 years beyond the *original* period if:
 - Probationer consents
 - During last 6 months of *original* period, and
 - Extension is for restitution or medical or psychiatric treatment
- Only this type of extension was beyond the 5-year maximum

Does not include substance abuse treatment. State v. Peed (2018)

Ordinary

MODIFICATIONS OF PROBATION

OTHER MODIFICATIONS OF PROBATION

1. If defendant's term of probation is extended for a period of _____

a. for good cause shown, pursuant to G.S. 15A-1344(d). (NOTE: The total of the original period of probation plus all extensions under G.S. 15A-1344(d) may not exceed five years.)

b. with the defendant's consent, pursuant to G.S. 15A-1342(g) or G.S. 15A-1343.2(d). (NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)

Special purpose

Probation Response Options				
	Failure	Relapse 12/1/15	Relapse 12/1/15	DM
REVIATION (G.S. 15A-1342)	Permissible to respond to new criminal offense	Permissible to respond to new criminal offense	Permissible to respond to new criminal offense	No restriction other than the restriction of G.S. 15A-1346(b)
COMMITMENT REQUIREMENT (G.S. 15A-1346)	For violations other than new criminal offense	For violations other than new criminal offense	For violations other than new criminal offense	Must be served continuously for period of 30 days
GOOD BEHAVIOR (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
SPECIAL PROBATION (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
CONSENT (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
EXTENSION (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days
UNRECORDED (G.S. 15A-1346)	For any violation	For any violation	For any violation	Not more than 30 days

Continuation

- The judge is never required to take any particular action



Additional Issues

- Diversion cases (p. 34-36)
- Interstate Compact cases (p. 36)
- Class H and I felonies (p. 13)
- Therapeutic courts (p. 13)
- Jail credit (p. 38)



Appeals

- District court defendants have a statutory right to appeal **revocation** or imposition of a **split sentence** to superior court for de novo violation hearing
 - No appeal of CRV
 - Probably no appeal of Quick Dips
- No de novo appeal to superior court if violation hearing “waived”
- After appeal, case remains in superior court



Appeals

- Class H and I felonies pled in district court
 - By default, violation hearing is in superior court
 - With consent, may be held in district court
 - Appeal is de novo to superior court



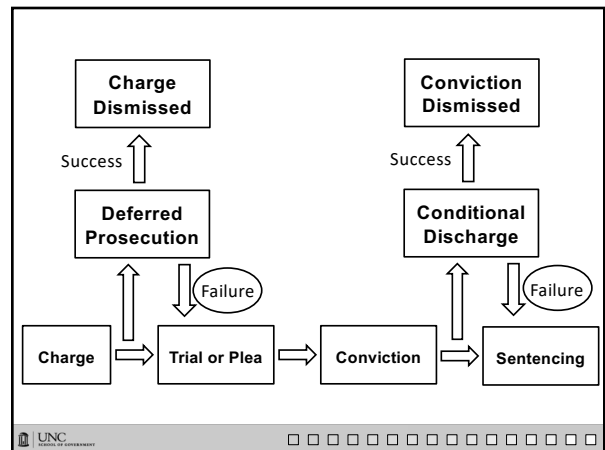
Appeals

- Superior court defendant may appeal **revocation** and **split sentences** to the court of appeals
 - Appeal does not stay an activated sentence
 - Appeal stays imposition of a split
 - Court may allow release with conditions pending appeal



Violations in Diversion Cases

- Deferred prosecution
- Conditional discharge



“Revocation” in Diversion Cases

- **Deferred prosecution**
 - **G.S. 15A-1344(d)**. If a probationer violates a condition of probation . . . the court . . . may order that charges as to which prosecution has been deferred be brought to trial.

“Revocation” in Diversion Cases

- **Conditional Discharge**
 - **G.S. 15A-1341(a6)**. Upon violation of a term or condition of a conditional discharge granted pursuant to this section, the court may enter an adjudication of guilt and proceed as otherwise provided.
 - **G.S. 90-96(a)**. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

Violations in Diversion Cases

- In general, violation hearings in diversion cases follow ordinary probation violation rules
- “In the absence of a provision to the contrary, and except where specifically excluded, the general probation provisions found in Article 82 of Chapter 15A apply to probation imposed under G.S. 90-96.” *State v. Burns*, 171 N.C. App. 759 (2005).

Violations in Diversion Cases

- **Distinctions**
 - Two-year maximum probation period
 - No confinement-based sanctions
 - Best to return to district of origin
- Unclear whether limits on revocation apply

The Limbo Problem

- “**Upon violation** of a term or condition of a conditional discharge granted pursuant to this section, the court may enter an adjudication of guilt and proceed as otherwise provided. **Upon fulfillment** of the terms and conditions of a conditional discharge granted pursuant to this section, any plea or finding of guilty previously entered shall be withdrawn and the court shall discharge the person and dismiss the proceedings against the person.”

— G.S. 15A-1341(a6)

