

Probation Violations

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UNC
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Probation Violations in North Carolina

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Probation Response Options

	Failure	Substantive Violation	Technical Violation	Term	Notes
REVOCATION G.S. 15A-1301	Permissible in emergency - New criminal offense - Absconding - Any violation after two years CPD	Permissible in emergency - New criminal offense - Absconding - Any violation after two years CPD	Permissible in emergency - New criminal offense - Absconding - Any violation after two years CPD CPD required to request judicial officer to initiate probation officer	Permissible in emergency - New criminal offense - Absconding - Any violation after two years CPD	- No revocation order for revocation of child's probation G.S. 15A-1345b
CONFINEMENT REQUIREMENTS TO VIOLATION ORDER G.S. 15A-1345d	For violations other than: - New criminal offense - Absconding - [§ 15A-1345d(2)]	For violations other than: - New criminal offense - Absconding - [§ 15A-1345d(2)]	N/A	For violations other than: - New criminal offense - Absconding - [§ 15A-1345d(2)]	- Must be served continuously - No "shock" CPD - Will not be subject to the same response rules - CPD parole agent can communicate with the offender - Must file with CPD in any case
SHOCK G.S. 15A-1345c(1)	For any violation - [§ 15A-1345d(2)]	For any violation - [§ 15A-1345d(2)]	For any violation - [§ 15A-1345d(2)]	N/A	- The result shall be shock for one month unless CPD is notified to serve shock during separate calendar month
SPECIAL PROBATION ORDER G.S. 15A-1345d	For any violation - [§ 15A-1345d(2)]	For any violation - [§ 15A-1345d(2)]	For any violation - [§ 15A-1345d(2)]	For any violation - [§ 15A-1345d(2)]	- Must be served in non-continuous intervals - If not
CONTINUED G.S. 15A-1345c(2)	Permissible in response to any violation - [§ 15A-1345d(2)]	Permissible in response to any violation - [§ 15A-1345d(2)]	Permissible in response to any violation - [§ 15A-1345d(2)]	Permissible in response to any violation - [§ 15A-1345d(2)]	- Must be served beyond a reasonable doubt - Counts for credit against suspended sentence
EXTENSION G.S. 15A-1345d G.S. 15A-1345e G.S. 15A-1345a, 1345b, or 1345c(1)	Only up to 2-year extension. Permissible at any time after notice and hearing of good cause shown. Special extension: up to 3 years beyond the original period of CPD probationer consent. CPD must have received original arrest and CPD to complete extension of probation.	Only up to 2-year extension. Permissible at any time after notice and hearing of good cause shown. Special extension: up to 3 years beyond the original period of CPD probationer consent. CPD must have received original arrest and CPD to complete extension of probation.	Only up to 2-year extension. Permissible at any time after notice and hearing of good cause shown. Special extension: up to 3 years beyond the original period of CPD probationer consent. CPD must have received original arrest and CPD to complete extension of probation.	Only up to 2-year extension. Permissible at any time after notice and hearing of good cause shown. Special extension: up to 3 years beyond the original period of CPD probationer consent. CPD must have received original arrest and CPD to complete extension of probation.	- The offender requires period of probation in default of probation and conditional discharge upon a new year
REINSTATEMENT G.S. 15A-1345d	At any time pending any offender	At any time pending any offender	At any time pending any offender	At any time pending any offender	- The court may authorize a probation officer to transfer a person to temporary probation after a review in G.S. 15A-1345b
TERMINATE G.S. 15A-1345d	At any time	At any time	At any time	At any time	- No credit shall be transferred to probation
CONTINUE WITHIN G.S. 15A-1345d	At any time	At any time	At any time	At any time	

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Before 2011

- A court could revoke probation for any violation of probation

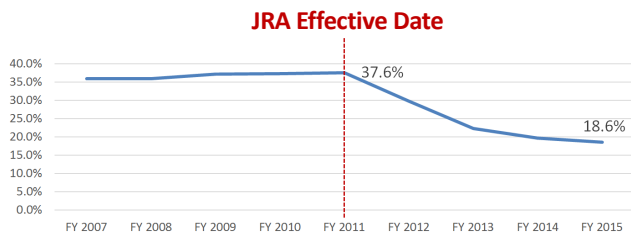
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After Justice Reinvestment

- Court may revoke only for **new crimes** and **absconding**
- For other violations (**technical violations**), the court may impose lesser sanctions:
 - Confinement in Response to Violation (CRV)
 - “Quick dips”

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Probation Revocation Rate



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Violation Hearing Procedure

Initiating a Violation

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

STATE OF NORTH CAROLINA - 17 -
File No. County of Mecklenburg 160550000
File No. County of Mecklenburg
JUDGE: _____ in the General Court of Justice
STATE VENUE: _____ District 12
VIOLATION REPORT
JANUARY, BRUCE ANTHONY
FILE NUMBER: _____ NC 28173211
NAME: _____
ALIAS: NONE DOB: 01/21/1983 G.S. 15A-1345

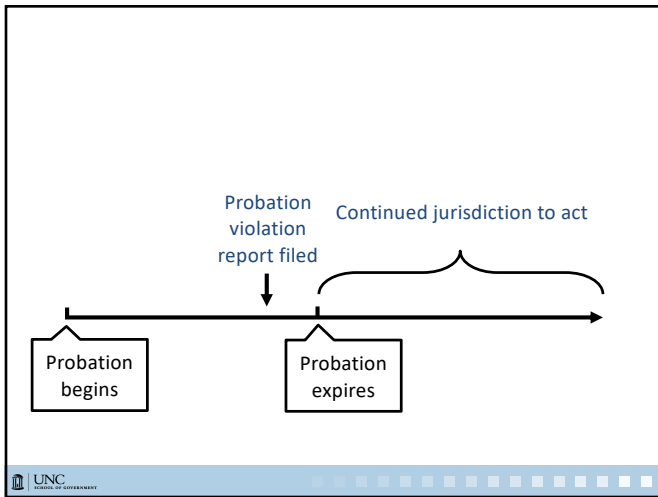
ADMINISTRATIVE REVIEW
The violations listed on this Violation Report were reviewed with _____, TOWN & COUNTRY PROBATION OFFICER on 01/27/2016.
I have read the Violation Report, and state that the contents are true to my best knowledge except those which are stated upon information and belief, and so to that I believe that they are true.

Signature Date: 3-27-16

REPORT AND FURNISHING TO: _____
BY: _____
TITLE: _____

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 before probation ends. G.S. 15A-1344(f).



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State v. Morgan (N.C., 2019)

- To preserve jurisdiction to act on a case after it has expired, the court must make a finding of **“good cause shown and stated”**

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Arrest and Bail (p. 6-7)

- Probationers can be arrested for a violation
- Generally entitled to bail
- Exceptions for certain “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)

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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

Final Violation Hearings

- Not a formal trial
- Probationer entitled to counsel
- Probationer may confront and cross-examine witnesses, unless the court finds good cause for not allowing confrontation
- Rules of evidence don't apply
 - Hearsay admissible
 - Exclusionary rule inapplicable
- Proof to judge's "reasonable satisfaction"

Response Options

Probation Response Options				
	Non-CRV Misconduct Placed on Probation			
REVOCAION G.S. 15A-1405	Permissible in: • New criminal offense • Absconding • New residence after 90 days prior CRV	Permissible in: • New criminal offense • Absconding • New residence after 90 days prior CRV	Permissible in: • New criminal offense • Absconding • New residence after 90 days prior CRV • Technical violation, other than failure to pay probation office	Permissible in: • New criminal offense • Absconding • New residence after 90 days prior CRV
IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1364(b)	From: • New criminal offense • Absconding • No report	From: • New criminal offense • Absconding • No report	N/A	From: • New criminal offense • Absconding • No report
CRV CRV G.S. 15A-1362(a), G.S. 15A-1362(b)	For any violation	For any violation	For any violation	N/A
SPECIAL PROBATION (CPCT) G.S. 15A-1363(a)	For any violation	For any violation	For any violation	For any violation
CONFINEMENT G.S. 15A-1363(b)	Permissible in response to any violation	Permissible in response to any violation	Permissible in response to any violation	Permissible in response to any violation
EXTENSION G.S. 15A-1364(a), G.S. 15A-1364(b), G.S. 15A-1364(c)	Permissible up to 1 year maximum. Permissible at any time after notice and hearing and for good cause shown.	Special response (by up to 3 years beyond the original period if (i) Probation officer is satisfied that the offender needs continued supervision and (ii) To complete restriction for non-crash violation	Permissible at any time after notice and hearing and for good cause shown.	Permissible at any time after notice and hearing and for good cause shown.
TRANSFER TO SUPERVISION G.S. 15A-1365	At any time (except non-offenders)	At any time (except non-offenders)	At any time (except non-offenders)	At any time*
TERMINATE G.S. 15A-1362(c)	At any time			
CRV CRV G.S. 15A-1362(d)	At any time			

Revocation (p. 16)

Serious Violations

- New criminal offense
- Absconding

Eligible for revocation upon first violation

Technical Violations

- Everything else

Three Strikes approach
Eligible for revocation after two prior CRV's

Revocation (p. 16)

- Activation of the defendant's suspended sentence
- Permissible in response to:
 - Commit no criminal offense
 - Absconding
 - Any violation by a probationer with two prior CRV's

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)

CRV (cont.)

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

Revocation after CRV

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

	Probation Response Options				Notes
	Felony	New DWI/Re-arrested Re-arrested		DWI	
REVOCATION G.S. 15A-1362	Permissible in response to: • New criminal offense • New violation after two prior CRV	Permissible in response to: • New criminal offense • New violation after two prior CRV	Permissible in response to: • New criminal offense • New violation after two prior CRV • New violation after two prior CRV • New violation after two prior CRV	Permissible in response to: • New criminal offense • New violation after two prior CRV	• No restriction on use for conviction of a Class 1 misdemeanor. G.S. 15A-1362B
COMMITMENT OR RESTRICTION (CRV) G.S. 15A-1362C	For violations other than: • New criminal offense • New violation after two prior CRV	For violations other than: • New criminal offense • New violation after two prior CRV	N/A	For violations other than: • New criminal offense • New violation after two prior CRV	• Must be served continuously for "weekend" CRV • Will not be reduced for consecutive period time • If served with one concurrent CRV
CRV STOP G.S. 15A-1362D G.S. 15A-1362E	For any violation 200 days	For any violation 200 days	For any violation 200 days	N/A	• No more than 30-day period • Must be no more than three consecutive months
PROBATION SPLIT G.S. 15A-1362F	For any violation 200 days	For any violation 200 days	For any violation 200 days	For any violation 200 days	• Split on consecutive intervals at the jail
CONTRAST G.S. 15A-1362G	Permissible in response to any violation N/A				• Must be placed beyond a reasonable doubt • Cannot be used against suspended sentence
EXTENSION G.S. 15A-1362H G.S. 15A-1362I G.S. 15A-1362J	Permissible for 1-1 year maximum. Permissible at any time after notice and hearing and/or good cause shown. Special report for 1-2 years beyond the original period if (1) Probationer convicted; (2) Doing bad in months of original period; and (3) To complete institution and/or treatment.				• Discretionary extension period of probation is allowed if probationer and conditional discharge cases in two years
REINTEGRATION G.S. 15A-1362K	Permissible at any time after notice and hearing and for good cause shown				
TRANSFER TO SUPERVISION G.S. 15A-1362L	At any time (except one violation)	At any time (except one violation)	At any time (except one violation)	At any time	• No cost rate reduction • Probation officer to report compliance with conditions of probation after all money is paid by the DWI G.S. 15A-1362L
TERMINATE G.S. 15A-1362M	At any time				• No more than 60 days "Termination" probation
CHANGING PROBATION MODIFICATION G.S. 15A-1362N	At any time				

1. The judge and probation officer are authorized to suspend probation upon completion of community service or payment of any fees, costs, and fines by the probationer.
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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)

	How Often Must a Response be Filed on Probation?				DWI	Notes
	February	Before 12/31/15	On/After 12/31/15			
REPROVISION G.S. 15A 1346	Permitted in response to have criminal offense - Absconding - Any violation after two prior DWI	Permitted in response to have criminal offense - Absconding - Any violation after two prior DWI	Permitted in response to have criminal offense - Absconding - Any violation after two prior DWI	Permitted in response to have criminal offense - Absconding - Any violation after two prior DWI		- No restriction unless by conviction of a Class 1 or 2 misdemeanor G.S. 15A 1346B
COMMITMENT/REPROVISION/CRV G.S. 15A 1346(2)	For violations other than criminal offense - Absconding - In jail	For violations other than criminal offense - Absconding - In jail	N/A	For violations other than criminal offense - Absconding - In jail		- Must be served continuously - Not restricted DWI - Must be in custody by conviction from time CRV already in place - Concomitantly with one month - Must be CRV in state court - Must be no more than three
QUICK DIP G.S. 15A 1346(3)	For any violation - DWI/DWI	For any violation - DWI/DWI	For any violation - DWI/DWI	For any violation - DWI/DWI		- No more than 5 quick dip - Must be in custody - Must be no more than three
SPECIAL PROBATION/CRV G.S. 15A 1346(4)	For any violation - DWI/DWI	For any violation - DWI/DWI	For any violation - DWI/DWI	For any violation - DWI/DWI		- May be served by court on weekends or other intervals - In the jail
G.S. 15A 1346(5)	- Absconding					- Restricted DWI - Must be in custody against suspended sentence
EXTENSION G.S. 15A 1346B	Ordinary up to 1 year maximum. Permissible at any time after notice and hearing and for good cause shown.					- No further maximum period of probation is allowed - Probationers are not considered discharge cases in two years
REPROVISION G.S. 15A 1346B	Permissible at any time after notice and hearing and for good cause shown.					
TERMINATE/UNREPROVISIONED G.S. 15A 1346C	At any time (except one offense)	At any time (except one offense)	At any time (except one offense)	At any time		- No court may reprobate a probation officer to transfer probation after all money is paid to the state - G.S. 15A 1346D
TERMINATE/CONTINUE/REPROVISION G.S. 15A 1346D	At any time					- No statute defines an "unterminated" termination

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Special Probation (Split)

- May be added in response to any violation
- Maximum term of imprisonment is ¼ of imposed suspended sentence
 - DWI: ¼ of maximum authorized penalty
- May be served on weekends or other intervals

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Exercises

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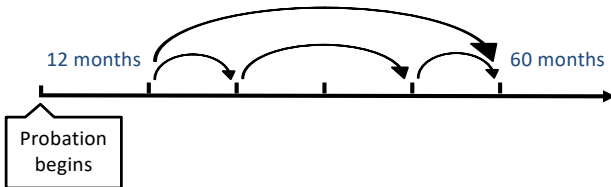
Extending Probation

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

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Ordinary Extensions

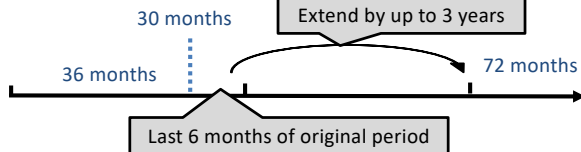
- At any time prior to expiration, for good cause shown, the court may extend probation to the 5-year maximum
 - No violation required
 - Could happen multiple times



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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 may go beyond the 5-year maximum



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	How Often Must a Response be Filed by the Probationer				DWI	Notes
	February	Before 12/31/15	On/After 12/31/15			
REVOCATION G.S. 15A 1346	Permissible in response to a new criminal offense. - Absconding - No reporting after two prior C/P's	Permissible in response to a new criminal offense. - Absconding - Any violation after two prior C/P's	Permissible in response to a new criminal offense. - Absconding - Any violation after two prior C/P's - DWI conviction - Incomplete probation - Incomplete treatment	Permissible in response to a new criminal offense. - Absconding - No reporting after two prior C/P's		- No restriction solely for conviction of Class 1 misdemeanor. G.S. 15A 1346(b) - If not an incident, the conviction must be reported to the probation officer. - Absconding after two prior C/P's
COMMITMENT OR RESPONSE TO VIOLATION (C/P) G.S. 15A 1346(2)	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's	N/A	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's		- Must be served continuously for "weekend C/P's" - Must be served for a minimum of 10 consecutive days from the C/P start date. - Must be served concurrently with one month of C/P in any case.
QUICK C/P G.S. 15A 1346(1b) G.S. 15A 1346(2)	For any violation. - 2nd Step	For any violation. - 2nd Step	For any violation. - 2nd Step	For any violation. - 2nd Step	N/A	- No more than 5 quick C/P's per month. - Used no more than three separate calendar months.
SPECIAL PROBATION (S/P) G.S. 15A 1346(3)	For any violation. - Report violation	For any violation. - Report violation	For any violation. - Report violation	For any violation. - Report violation		- May be served in conjunction with intervals on the jail.
CONTRAST G.S. 15A 1346(4)	Permissible in response to any violation.	Permissible in response to any violation.	Permissible in response to any violation.	Permissible in response to any violation.		- Must be served beyond a reasonable doubt. - Cannot be used against suspended sentence.
EXTENSION G.S. 15A 1346(5) G.S. 15A 1346(6) G.S. 15A 1346(2b)	Permissible at any time after notice and hearing for good cause shown. Special permit for up to 90 days beyond the original period if (i) Probationer completes (1) Drug test in months of original period, and (2) To complete treatment or medical treatment.					- The number of consecutive periods of probation is defined as probation in default of probation and conditional discharge cases in two years.
MODIFICATION G.S. 15A 1346(7)	Permissible at any time after notice and hearing for good cause shown.					
TRANSFER TO UNSUPERVISED G.S. 15A 1346(8)	At any time (except one offense)	At any time (except one offense)	At any time (except one offense)	At any time (except one offense)		- The court may authorize a probation officer to transfer a probation officer to unsupervised probation after all money is paid to the debt.
TERMINATE G.S. 15A 1346(9)	At any time					- The court may authorize a probation officer to terminate "weekend" probation.
REPEAL OR MODIFICATION G.S. 15A 1346(10)	At any time					

Transfer to Unsupervised

- Permissible at any time
- Judge may authorize probation officer to transfer a defendant to unsupervised probation once all money is paid

	How Often Must a Response be Filed by the Probationer				DWI	Notes
	February	Before 12/31/15	On/After 12/31/15			
REVOCATION G.S. 15A 1346	Permissible in response to a new criminal offense. - Absconding - No reporting after two prior C/P's	Permissible in response to a new criminal offense. - Absconding - Any violation after two prior C/P's	Permissible in response to a new criminal offense. - Absconding - Any violation after two prior C/P's - DWI conviction - Incomplete probation - Incomplete treatment	Permissible in response to a new criminal offense. - Absconding - No reporting after two prior C/P's		- No restriction solely for conviction of Class 1 misdemeanor. G.S. 15A 1346(b) - If not an incident, the conviction must be reported to the probation officer. - Absconding after two prior C/P's
COMMITMENT OR RESPONSE TO VIOLATION (C/P) G.S. 15A 1346(2)	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's	N/A	For violations other than a new criminal offense. - Absconding - No reporting after two prior C/P's		- Must be served continuously for "weekend C/P's" - Must be served for a minimum of 10 consecutive days from the C/P start date. - Must be served concurrently with one month of C/P in any case.
QUICK C/P G.S. 15A 1346(1b) G.S. 15A 1346(2)	For any violation. - 2nd Step	For any violation. - 2nd Step	For any violation. - 2nd Step	For any violation. - 2nd Step	N/A	- No more than 5 quick C/P's per month. - Used no more than three separate calendar months.
SPECIAL PROBATION (S/P) G.S. 15A 1346(3)	For any violation. - Report violation	For any violation. - Report violation	For any violation. - Report violation	For any violation. - Report violation		- May be served in conjunction with intervals on the jail.
CONTRAST G.S. 15A 1346(4)	Permissible in response to any violation.	Permissible in response to any violation.	Permissible in response to any violation.	Permissible in response to any violation.		- Must be served beyond a reasonable doubt. - Cannot be used against suspended sentence.
EXTENSION G.S. 15A 1346(5) G.S. 15A 1346(6) G.S. 15A 1346(2b)	Permissible at any time after notice and hearing for good cause shown. Special permit for up to 90 days beyond the original period if (i) Probationer completes (1) Drug test in months of original period, and (2) To complete treatment or medical treatment.					- The number of consecutive periods of probation is defined as probation in default of probation and conditional discharge cases in two years.
MODIFICATION G.S. 15A 1346(7)	Permissible at any time after notice and hearing for good cause shown.					
TRANSFER TO UNSUPERVISED G.S. 15A 1346(8)	At any time (except one offense)	At any time (except one offense)	At any time (except one offense)	At any time (except one offense)		- The court may authorize a probation officer to transfer a probation officer to unsupervised probation after all money is paid to the debt.
TERMINATE G.S. 15A 1346(9)	At any time					- The court may authorize a probation officer to terminate "weekend" probation.
REPEAL OR MODIFICATION G.S. 15A 1346(10)	At any time					

“Elect to Serve”

- No longer an option by statute (since 1997)

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