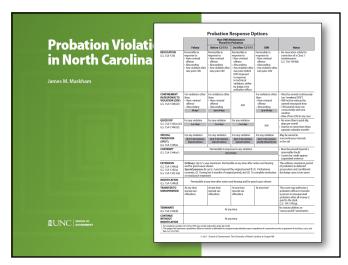
Probation Violations Jamie Markham January 2025 www.sog.unc.edu

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Big Picture

- 63,000 supervised probationers
- 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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Violation Hearing Procedure

4

Initiating a Violation

Supervised probation:
 Probation Violation
 Report (DCC-10)

 Probationer is entitled to 24 hours notice of alleged violations



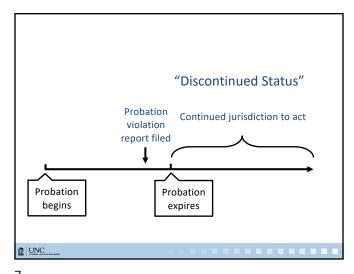
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Jurisdiction

- 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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G.S. 15A-1344(f)

- (f) Extension, Modification, or Revocation after Period of Probation. The court may extend, modify, or revoke probation after the expiration of the period of probation if all of the following apply:
 - (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
 - (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
 - (3) The court finds for good cause shown and stated that the probation should be extended, modified, or revoked

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Memorializing Good Cause The Court further Orders: (check all that apply) The Civit of Superior Court, under 0.8.7 A-0.04(d), shall immediately dipluture any undisturated manies paid by the defendant under the Judgment, as provised in heat Judgment, the defendant ethall gay to the Clerk the Tools Amount Duer Delow. Statistical Research. Representation of the property of the Court of the Co

Good Cause

- Identify "discontinued" cases
- If there is good cause, be sure to make a finding
 - Need not be detailed
 - There is no check-box
- Broad discretion
 - Pending charges
 - Violations filed near expiration
 - Continuances
 - Absconding

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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)

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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

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Final Violation Hearings

- Proper venue:
 - -Where probation imposed
 - -Where violation occurred
 - -Where probationer resides

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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

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No Exclusionary Rule

- State v. Boyette, 287 N.C. App. 270 (2022).
 - Defendant's probation revoked for possession of a firearm and meth. Defendant argued on appeal that the evidence was found during an improper search.

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No Exclusionary Rule

"In 1982, our Supreme Court held 'that evidence which does not meet the standards of the [F]ourth and [F]ourteenth [A]mendments to the United States Constitution may be admitted in a probation revocation hearing.' . . . Thus, regardless of whether the search would have passed constitutional muster if offered as the basis for the admission of evidence at a trial on the new offenses, the trial court did not err by admitting the evidence at Defendant's probation revocation hearing."

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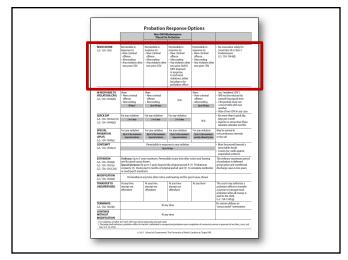
Final Violation Hearings

- 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"

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Response Options



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

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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

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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

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New criminal offense

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

1. General Statute 15A-1343(b)(1) "Commit no criminal offense in any jurisdiction" in that OFFENDER WAS ARRESTED AND CHARGED WITH FELONY UTTERING A FORED INSTRUMENT ON 02/20/2022 OFFENSE DATE 00/31/31 AT THE STATE EMPLOYEE'S CREDIT UNION IN WAKE COUNTY CASE 22CR20479.

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State v. Singletary, (N.C. Ct. App. 2023)

"The sworn violation report constitutes competent evidence sufficient to support the trial court's finding that [the] defendant committed this violation. . . The trial court was entitled to infer from two arrest warrants issued by two different law enforcement offices in two alleged incidences involving fraudulent checks, two sworn violation reports, and Horne's sworn testimony, that the images of Defendant depicted her committing the crimes alleged. Thus, the court made an independent finding based on the evidence provided at the probation revocation hearing and did not reach its determination based solely on Defendant's being charged with the crimes. A probation revocation hearing is not a trial, and the State need not present evidence sufficient to convict Defendant nor call as witnesses the investigating officers of the crimes alleged."

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)

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Absconding

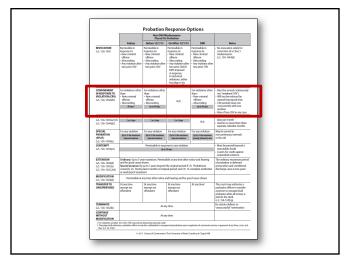
- · More than merely failing to report
- More than merely failing to remain within the jurisdiction
- Facts supporting absconding:
 - Long absence from residence
 - Repeated attempts by officer to contact
 - Probationer knows officer is looking for him or her and still doesn't respond

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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



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 (DO NOT apply jail credit)
 - DWI: Up to 90 days

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CRV (cont.)

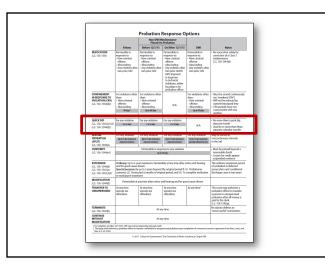
- Must be continuous period (no "weekend CRV")
- Must be to proper place of confinement
 - Local jail or SMCP for misdemeanors
 - SMCP for DWI
 - DAC for felonies
 - Not DART-Cherry or Black Mountain
- CRV periods ordered in multiple probation cases must run concurrently
- Maximum of 2 CRVs per case

Revocation after CRV

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

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Quick Dips

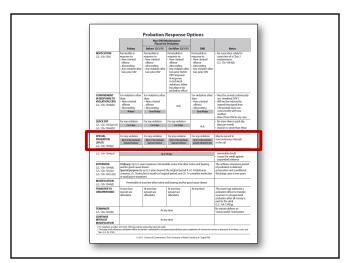
- 2-3 days of jail confinement
 - No more than 6 quick dips days per month
 - Used in no more than three separate calendar months of probation
 - Permissible for DWI for offenses committed on/after December 1, 2023
- Quick Dips may be imposed by judge or by probation officer through "delegated authority"

Revocation after Quick Dip

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

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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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A defendant was placed on probation for Felony Larceny in 2024. He has a 5-15 month suspended sentence. The defendant admits to two probation violations (there are no prior violations):

- Failure to report to the probation officer
- Positive drug screen

Which responses are permissible?

- **K**Revocation?
- **€**CRV?
- **✓**Quick dip?
- ✓Split?

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"Terminal CRV"

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

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	Probation Response Options						
		Placed Or	Probation				
	Felony	Before 12/1/15	On/Miter 12/1/15	DWI	Notes		
9EVOCATION G.S. 15A-1345	Permissible in tespone to: - New criminal offense - Absconding - Any violation after two prior CRV	Premioble in nesponse to: - New criminal offence - Abscording - Arey violation after two prior CRV	Permissible in response to: - New criminal office: - Abscording - Any violation after two prior QUICK CBPS imposed in response to technical violations, either by judge or by probation officer	Permissible in response to: New criminal officese - Absorbing - Any riolation after two prior CRV	No nevocation solely for consistion of a Class 3 minderneanor. G.S. ISA-1344(t)		
CONFINEMENT IN RESPONSE TO WOLATION (CRV) G.S. 15A-1344(SZ)	For violations other than: • New criminal offerse • Absconding #6 days*	For violations other than: New criminal offerse Abscording Sylv Miles	NA	For violations other than: New criminal offense Misconding Unit Wiley	Must be served continuous ton "weekend CRIF") Will not be reduced by earned time-lipod time CRIF periods must run concurrently with one another Max of two CRIF in any case.		
QUICK DIP G.S. 15A-1343(a1)(3) G.S. 15A-1344(d2)	For any violation 2 ar 2 days	For any violation 2 ar 2 days	For any violation 2ar2days	NA	No mose 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 Sp to N the movimum improof sentence	For any violation dy to Nittle maximum imposed sentence	For any violation Up to N the maximum Improved sentence	For any violation lip to 3 the nonlinear penalty allowed by low	May be served in noncoedinaous intervals in the Juli		
CONTEMPT G.S. 15A-1344(e1)			onse to any violation Malge		Must be proved beyond a reasonable doubt Counts for credit against		
EXTENSION G.S. 15A-1344(d) G.S. 15A-1342(d) G.S. 15A-1343.2(d)	and for good cause: Special purpose: By	up to 3 years beyond last 6 months of origi	the original period if: 0	To Probationer	The ordinary maximum peri of probation in deferred presecution and conditional discharge cases is two years		
GS, 15A-1344(d)	Fernissible at	any time after notice a	nd hearing and for go	od cause shown			
TRANSFER TO UNSUPERVISED	At any time (except sex offenders)	At any time isocapt sex offenders	At any time lescopt sex offendors)	At any time?	The court may authorize a probation officer to transfer a person to unsupervised probation after all money is paid to the derk. G.S. 154-1343(g).		
TERMINATE	At any time				No statute defines an 'unsuccessful' termination		
GS.15A-1342(b)			vtime				

Extending Probation

• Two types: ordinary and special purpose

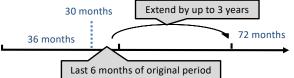
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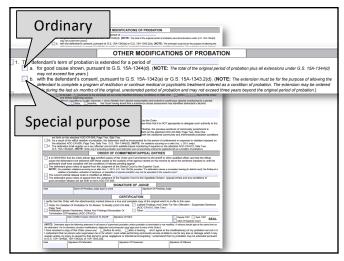
Ordinary Extensions • At any time prior to expiration, for good cause shown, the court may extend probation to the 5-year maximum — No violation required — Could happen multiple times 12 months Probation begins

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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 <u>restitution</u> or <u>medical or psychiatric</u> <u>treatment</u>
- Only this type may go beyond the 5-year maximum





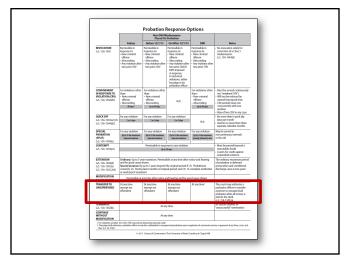
Name Proceedings Processing Processi				Response O	ptions	
No. Procession			Non-DWI A Placed Or	Nisdemeanor Probation		
Schizolita September Septe						
CONTROLLEGY For extinant other law street, and the controllegy of the	REVOCATION GS. 150-1345	response to: New criminal offense Abscending Any violation after	response to: - New criminal offense - Absconding - Are violation after	response to: - New criminal offenze - Abscording - Any violation after two prior QUICK DBPS imposed in sisponse to technical violations, either by kadae or by	response to: New criminal offerse Abscording Any violation after	conviction of a Class 3 minderneanor.
Control (1997) Contro	IN RESPONSE TO VIOLATION (CRV)	than: - New criminal offense - Absconding	than: New criminal offerse Abscording		than: - New criminal offense - Absconding	Will not be reduced by earned time/good time Cit/ periods must run concurrently with one another
Production (Control 1997) Provided to the control 1997 of the con	GS.15A-1343(a)()3	For any violation 2 ar 2 days			NA	days per month - Used in no more than three
CALIDATION PROPERTY SERVICE STATES AND ADMINISTRATION OF THE PROPERTY SERVICE STATES AND ADMINIS	PROBATION (SPLIT)	Spin Nithemonimum	Op to N the maximum	Up to N the maximum	Spin Side notinum	noncontinuous intervals
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CS_161-1002	GS. 15A-1344(d) GS. 15A-1342(d)	and for good cause Special purpose R	and for good cause shown. Special numers of the property of the principal period if (II). Probationer			
	MODIFICATION G.S. 15A-1344(d)	Permissible at	any time after notice :	and hearing and for go	od cause shown	
CS. 154-130-26 After time "versuccessful" termination CONTINUE WITHOUT At any time MODIFICATION AT ANY TIME WITHOUT AT A STATE OF THE ATTERNATION WITHOUT A STATE OF THE ATTERNATION WITH A S		(except sex offenden)	(incept see offenders)		- Augusta	a person to unsupervised probation after all money is paid to the derk. G.S. 15A-1343/gl.
WITHOUT Ac any time MODIFICATION	GS. 15A-1342(b)		At any time			
1. For violations on lafter 16 1/2014, CRV may not be reduced by prior jail credit.	WITHOUT MODIFICATION		At any time			

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Modification

- Court may add/remove conditions at any time for good cause shown
 - No violation need have occurred
- After violation, the judge may add Intermediate conditions to a Community case

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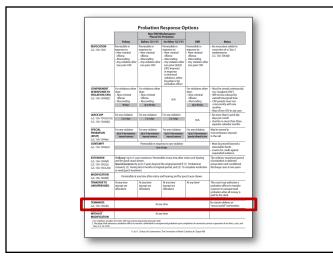


Transfer to Unsupervised

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

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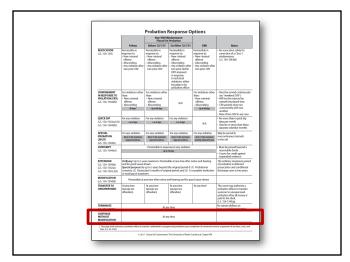


Termination

- Ends probation early
- Permissible at any time if warranted by the defendant's conduct and "the ends of justice"
- "Terminate unsuccessfully"

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Continuation

The judge is never required to take any particular action

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"Elect to Serve"

No longer an option by statute (since 1997)

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