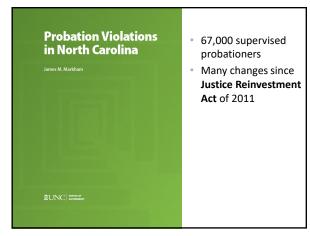
Probation Violations Jamie Markham January 2021 www.sog.unc.edu



| | | Nos-OWI M Placed Or | Indemesor Probation | | | |
|--|---|--|---|---|--|--|
| | Felony | Before 12/1/15 | Ov/After 12/1/15 | DWI | Notes | |
| REVOCATION 55. 154-1345 | Permusible in response to: - Nan oriented offerse - Abstanding - Any rodation after two prior CPI | Permissible in response to: Near criminal offense - Massanding - Any violation after two prior CRV | Permisoble in response to: New cheminal effence Absoconding Any visibition after two prior QUICK DB's impossed in response to secholical stolations, wither by judge or by probation officer. | Permissible in response to: - New criminal offerce - Abscracking - Any volution after two prior CNY | No resocution solely for conviction of a Closs 3 misdematics. G.S. 334-1544(d) | |
| CONFINEMENT IN RESPONSE TO INCLATION (CRV) LS. 15A-1344(37) | for volations other than • New criminal offense • Abscording | For violations other than • New continual offense • Absconding Spin Kiden | NA | For violations other than - New criminal officese - Absording Bris Midge | Most be served continuously por "weeklood CRV") Mill not be reduced by samed time-spood time CRV periods must run concurrently with one another May of two CRV in any case | |
| DERCK DIP 15. 154-1343(a1)(0) 15. 154-1344(d2) | For any violation 2 or Edigo | For any violation 2 or 2 days | For any violation 2 or 3 days | NA | No more than 6-quick dip days per month Used in no more than three separate calendar months | |
| SPECIAL PROBATION (SPLIT) 55, 154-1346H | For any violation by to 4 the regional improved authors | For any slobation dy-th-formational deposit antimat | For any violation Opts India maximum appear undersor | For any violation up to it the nesimen possily allowed by law | May be served in noncontinuous intervals in the Juli | |
| CONTEMPT 15.154-1344(e1) | | | nse to any violation Males | | Must be proved beyond a neasonable doubt Counts for credit against suspended sentence | |
| DITENSION 25. 15A-1344(d) 25. 15A-1342(d) 25. 15A-13432(d) | and for good cause to | up to 3 years beyond last 6 months of ongs | the oriented regard of | El Probationer | The cedinary maximum period of probation in deferred protection and conditional discharge cases is two years | |
| MODEFICATION S.S. ISA-1344(d) | Premissible at | any time after notice a | nd hearing and for go | od cause shown | | |
| TRANSFER TO UNSUPERVISED | At any time lexcept sex effenders | At any time (except sex offendent) | At any time invest ser offenders | At any time? | The court may authorize a probation officer to transfer a person to unsupervised probation after all money is petd to the clock. G.S. 154-154bgg. | |
| TERMINATE SS. 154-1342(b) | | Atue | ytime | | No statute defines an "emocossisis" termination | |
| CONTINUE WITHOUT MODERICATION | | | ytime | | | |
| For violation; on Who 3. The judge shall author box, E.S. 20-1745. | 10/1/2014, OV may not be tire a probation officer to be | educed by pror pal code. ander a defendant to among | ented pollution upon to | registras of community we | otice or payment of any three, costs, and | |



Before 2011

 A court could revoke probation for any violation of probation

UNC

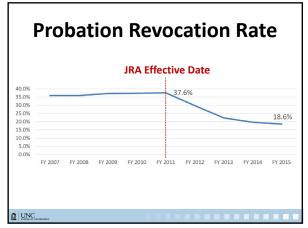
4

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"

UNC UNC

5





Violation Hearing Procedure

7

Initiating a Violation

 Supervised probation: Probation Violation Report (DCC-10)

 Probationer is entitled to 24 hours notice of alleged violations



1 UNC

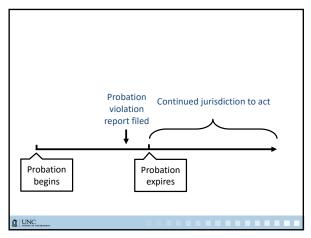
8

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).



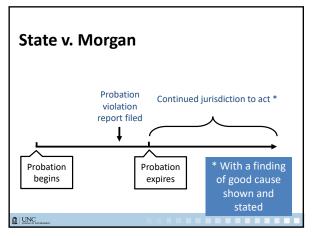




State v. Morgan (N.C., 2019)

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

UNC 11





| State v. I | Morgan |
|------------|--------|
|------------|--------|



"THE COURT FINDS FOR GOOD CAUSE SHOWN AND STATED THAT PROBATION SHOULD BE REVOKED."

13

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)

UNC.

14

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

UNC



| Final Violation Hearings |
|-----------------------------|
| Proper venue: |
| – Where probation imposed |
| – Where violation occurred |
| – Where probationer resides |
| |
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| UNC. |
| 16 |
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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"

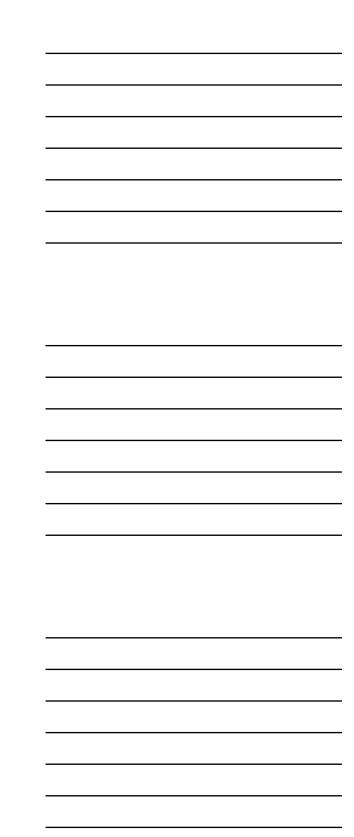
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17

Response Options

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| Note | | | Non-Date 6 | Response C | ptions | |
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| Value Valu | | reporte to: - New criminal offerce - Abscording - Am violation after | response to: - New criminal offense - Abscanding - Ans violation after | response for - New criminal offense - Alex violation after two prior QUICX DPS imposed to rechnical violation, other he kelevon by | reporse to: - New criminal offense - Absconding - Any violation after | conviction of a Class 3 mindermeanor. |
| SOCIO CON CONTROLLO POR CONTRO | VIOLATION (CRV) | New criminal offense Absconding | New criminal offense Absconding | NA | New criminal offense Absconding | Will not be reduced by earned time/good time OW periods must run concurrently with one another |
| A section of the control of the cont | GS. ISA-IMBUT(I) | | | | NA. | No more than 6-quick dip days per month Dipart in no more than these |
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| | | | | | At any time! | probation officer to transfer a person to unsupervised ambition whereif |
| TERMINATE No statute defines on GC 154-134(b) At any time Inneutron for termination | | | Ata | ny time | | No statute defines an "ansaccessful" termination |
| CONTRAME WITHOUT ACCEPTATION ACCEPTATION To fire industries outline with 2004 Of time and by reduced to other self-code. | MODIFICATION | | | | | |

Revocation (p. 16) Serious Violations • New criminal offense • Absconding Eligible for revocation upon first violation Three Strikes approach Eligible for revocation after two prior CRV's

20

Revocation (p. 16)

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

<u>UNC</u>



Revocation (p. 16)

- Activation of the defendant's suspended sentence
- Permissible in response to violations of:
 - Commit no criminal offense
 - Absconding

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22

4. Condition of Probation "Commit no criminal offense in any jurisdiction" in that THE DEFENDANT HAS THE FOLLOWING PENDING CHARGES: ON 10/10/12 THE DEFENDANT WAS CHARGED WITH DWLR AND FICT/AI TITLE/REG CARD/TAG IN 12CR 705617, EXPIRED/NO INSPECTION AN OPERATE VEH NO INS IN 12CR 705618 AND DRIVE/ALLOW MV NO REGISTRATION AND CANCL/REVOK/SUSP CERTIF/TAG IN 12CR 705619 AND ALL ABOVE CHARGES ARE IN SAMPSON COUNTY. ON 10/17/12 THE DEFENDANT WAS CHARGED WITH SHOPLIFTING CONCEALMENT GOODS IN 12CR 223602 IN WAKE COUNTY. ON 11/16/12 THE DEFENDANT WAS CHARGED WITH DWLR IN 12CR 709464 IN HARNETT COUNTY.

ON 12/18/12 THE DEFENDANT WAS CHARGED WITH POSSESSION OF FIREARM BY FELON IN 12CR 057780 AND POSSESS MARIJUANA UP TO

1/2 OZ IN 12CR 05777 IN JOHNSTON COUNTY.

IF THE DEFENDANT IS CONVICTED OF ANY OF THE CHARGES IT WILL
BE A VIOLATION OF HIS CURRENT PROBATION.

23

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

UNC





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)

1 UNC

25

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

UNC

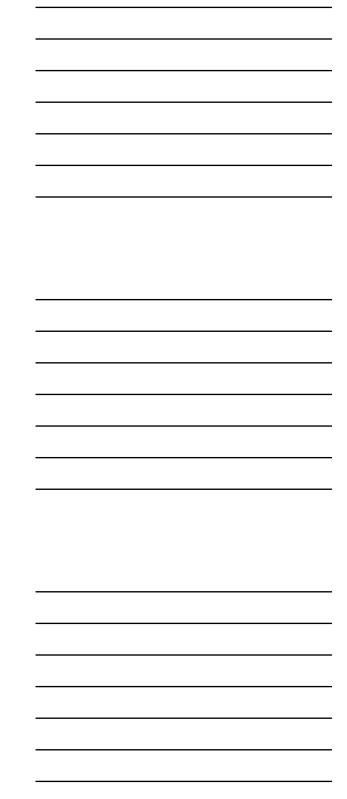
26

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

UNC





| | | Non-OWLE Placed O | disdesseanor s Probation | | |
|--|--|--|--|---|--|
| | Felony | Before 12/1/15 | On/What 12/1/15 | Drait | Notes |
| REVOCATION GS. 154-1345 | Permitable in response to response to representation of the response to the response of the re | Permissible in resperce for - New criminal offerse - Altoconding - Any violation after two prior CRV | Permissible in response for response for some comminal offerne - Abscanding - Absca | Premissible in response for response for - New criminal offerse - Absunding - Any richtion after two prior CITY | No revocation solely for conviction of Clies 5 mindemandor. G.S. 154/1544(d) |
| CONFINEMENT IN RESPONSE TO VIOLATION (CRV) G.S. 15A-1344(C) | For violations other than: New criminal offense Absolviding Majer | For violations other than: New criminal offense Absorrding Om Midge | N/A | For violations other than: - New criminal offense - Absoluting @ WMys | Mant be served continuously too "received ON") Will not be reduced by earned timelycod time ON periods must ran concurrently with one another Max of two ON's any case |
| GS 154-1343(4)(I) GS 154-1344(II) | 2 or 3 dispe | 2 or 3 days | 2 or 3 diges | N/A | digo per month Used in no more than three separate calendar months |
| SPECIAL PROBATION (SPLIT) GS 155-15500 | For any violation By to 'S the maximum inproof antinox | For any violation By in 's the maintain inguised sentency | For any violation Sp to '8 the maximum improof unitous | For any violation By in 's the nucleum possity althoughly low | May be served in noncontinuous intervals in the Ital |
| CONTEMPT GS. 1SA-1344(x1) | | | onse to any violation Utilige | | Must be proved beyond a reasonable-doubt Counts for credit against suspended sentence |
| EXTENSION G.S. 15A-1344(8) G.S. 15A-1340(6) G.S. 15A-1340(2)(8) | and for good cause Special purpose it | shown. rap to 3 years beyond plast 6 months of orig | sible at any time alter the original period if- inal period; and (I). To | (I) Polationer | The ordinary maximum period of probation to deleved prosocution and conditional decharge-cause is two years |
| MODEFICATION G.S. 15A-1344(d) | Permissible at | any time after notice- | and hearing and for go | red cause shown | |
| TRANSFER TO UNSUPERVISED | At any time loxcapt sex offendent | At any time loxcapt sex offendary | At any time loxings sex offendant | At any time! | The court may authorize a probation officer to transfer a person to unsupervised probation after all money is said to the clark. G.S. 1SA-1345(g). |
| GS. ISA-ISA(B) | | Ata | ny time | | No statute defines an "ansaccessful" tarmination |
| CONTINUE WITHOUT MCCEPICATION | | Ata | ny time | | |

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

- Permissible in response to violations <u>other than</u> "commit no criminal offense" and "absconding"
- Length:
 - Felony: 90 days
 - DWI: Up to 90 days
 - CRV repealed for misdemeanants placed on probation on/after 12/1/15

1 UNC

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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
 - 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

30

1 UNC

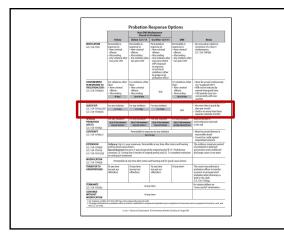


Revocation after CRV

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

LINC

31



32

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"

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Revocation after Quick Dip

 After two Quick Dips, imposed by judge or by probation officer, <u>misdemeanor</u> probation may be revoked for any subsequent violation

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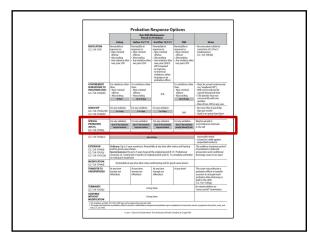
34

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)

1 UNC

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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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38

A defendant was placed on probation for Felony Larceny in 2019. He has a 5-15 month suspended sentence. The defendant admits to two probation violations (there are no prior violations):

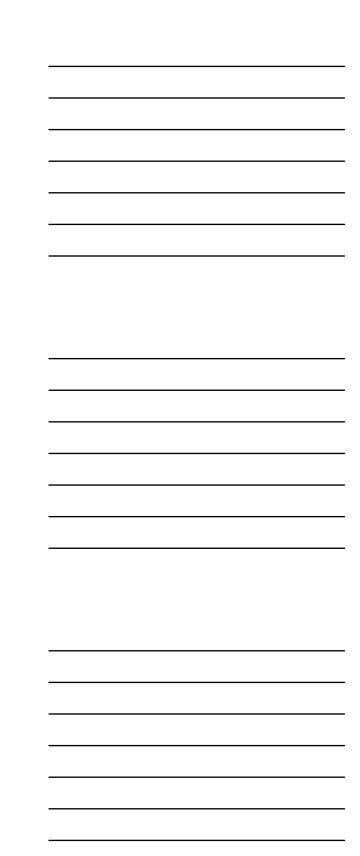
- Failure to report to the probation officer
- Positive drug screen

Which responses are permissible?

- **X**Revocation?
- √CRV?
- √Quick dip?
- √Split?

<u>UNC</u>





"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

40

A defendant was placed on probation for DWI in 2020. 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 10/13/20 THE DEFENDANT MAS CHARGED WITH POSSESSION OF FIREARM BY FELON IN 20CRS/05617 IN SAMPSON COUNTY. IF THE DEFENDANT IS CONVICTED OF THIS CHARGE IT WILL BE A VIOLATION OF HIS CURRENT PROBATION.

Which responses are permissible?

✓ Revocation?

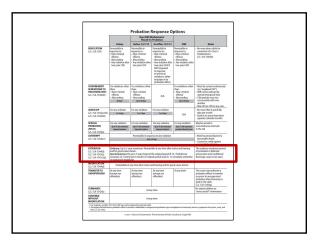
XCRV?

XQuick dip?

√Split?

UNC_

41





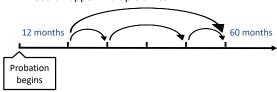
Extending Probation

• Two types: ordinary and special purpose

43

Ordinary Extensions

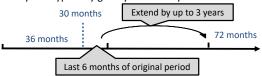
- At any time prior to expiration, for good cause shown, the court may extend probation to the 5-year maximum
 - No violation required
 - Could happen multiple times



44

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





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| J 0. G. | , | IODIFICATIONS OF PROBATION | | | |
| | | High, (NOTE): The book of the original period of p SA-134200 or G.S. 15A-1343.200. (NOTE): 1 | nbation plus all extensions under G.E. 15A-1344(6). The extension must be for the purpose of allowing the | | |
| | | | TIONS OF PROBAT | TON | |
| \square | | | TIONS OF PROBAT | ION | |
| a. for good caumay not exceed with the defe | of five years.) Indent's consent, pursua complete a program of restit. Bast six months of the origin rest | S.S. 15A-1344(d), (NOTI int to G.S. 15A-1342(a) billion or continue medical of un- plantation of continue medical of un- view belongs territory continue a to- urbe belongs territory continue a to- tal of the continue of the continue of the continue of the top to see the a tourbeautic of the additional of the top tourbeautic of the continue of the continue of the top tourbeautic of the continue of the continue of the continue of the top tourbeautic of the continue of the con | or G.S. 15A-1343.2(d). (N psychiatric treatment ordere rebablion and may not exceed the | IOTE: The ext | on plus all extensions under G.S. 154-1344(i) thension must be for the purpose of allowing the ordered extension may be ordered extension may be ordered system of probation. The extension may be ordered system of the original period of probation.) |
| G.5. 15A | 1344(e2), (MOTE: Order only if extending probable | COMMITMENT/APPEAL ENTRIES | istantanof as a condition of probation.) | | |
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| Sale | Manne Cf Presiding Judge (type or point) | SIGNATURE OF JUDGE | Julge | | |
| | | CERTIFICATION | | | |
| Onder On Vi | Order with the attachment(s) marked below is ission Of Probation Or On Motion To Modify (polate Worksheet, Notice And Findings (Nevo Of Probations) (AOC-CR-612) | ACC-CR-609, Addicted Findings And On MACC-CR-615, Side Two | der For Sex Offenders - Suspended Sentence | | |
| Oate | | Signature Of Clarit | Ches of Superior Court SEAL | | |
| the defendant. For I have received i I understand that wallate uniters in | in-chambers consent modifications, defendent and , copy of this Order paleus uses | resocutor must sign prior to entry of the Croke;) entry,after a hearing,and 1 agree to work white performing community sensice is 1 gence or intentional wrongdoing, 1 understan | r modified. A witness should sign at the same time as in the modification(s) of my probation set out in it, lable to me for any loss or damage which I may if that my probation may be extended pursuant. | | |
| San | Signature Of Defendant | Signature Of Prosecutor | Signature Of Iddiness | | |

| The content of the | | | Non-OWI Mindemeanor Placed On Probation | | İ | |
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47

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

II UNG





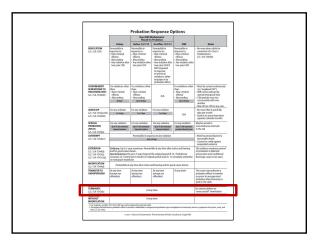
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| QUICK DIP G.S. 154-1340(d) G.S. 154-1344(d) | For any Holation 2 w 3 dige | For any violation 2 or 3 days | For any violation 3 or 3 days | N/A | No more than 6-quick dip days per month Used in no more than three separate calendar months |
| SPECIAL PROBATION (SPLIT) GS. 158-1344(4) | For any violation By to 5 the maximum improof anning | For any violation by in 5 the maximum improof senting | For any violation Sp to 5 the maximum improductions | For any violation By in it the maximum panelty allowed by low | May be served in noncontinuous intervals in the Ital |
| CONTEMPT G.S. 1SA-1344(µ1) | | Permitable in resp Ren | onse to any violation Ulfalge | | Must be proved beyond a reasonable-doubt Counts for codit against supported sentence |
| 65.15A-1340.0 65.15A-1340.0 65.15A-1340.0 65.15A-1340.20 | and for good cause Special purpose it | hown. rap to 3 years beyond plast 6 months of one | sible at any time alter the original period if- inal period; and (I). To | (T) Probationer | The ordinary maximum period of probation to deleved prosocution and conditional decharge-cause is two years |
| MODEFICATION | Derwinsbleat | an tine after notice. | and hearing and for po | nd cause shown | |
| TRANSFER TO UNSUPERVISED | At any time loxcept sex offenders | At any time toxispt sex offendary | At any time sweept sex offendant | At any time! | The court may authorize a probation officer to transfer a person to unsupervised probation after all money is paid to the clock, G.S. 104-134(no). |
| GS. ISA-ISO(b) | | Ata | ny time | | No sursus dennes an "ansaccessful" termination |
| CONTINUE WITHOUT MCCEPICATION | | Ata | ny 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

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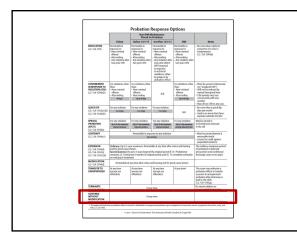


Termination

- 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) |
| |
| |
| |
| |

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

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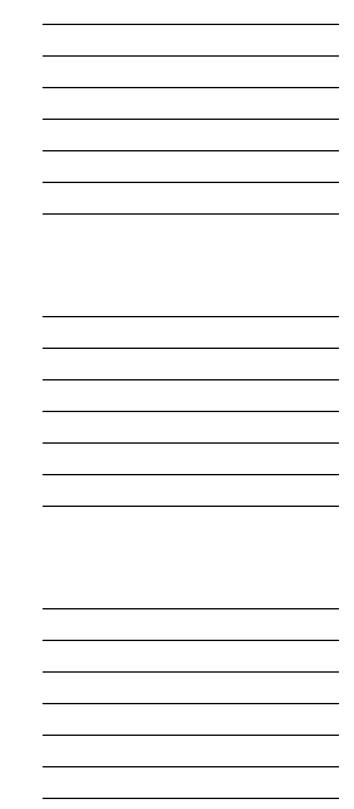
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Appeals

- 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

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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

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