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### Overview

- 85,000 people on probation
- Around 19% of them get revoked and imprisoned for violating
- They are entitled to notice and a hearing on alleged violations

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### Justice Reinvestment: Big Picture

- Since 2011, you can revoke only for:
  - New criminal offenses
  - Absconding
- For other violations (“technical violations”) you can respond with any sanction other than revocation, including “CRV”
- After two CRVs, probationer may be revoked for any violation

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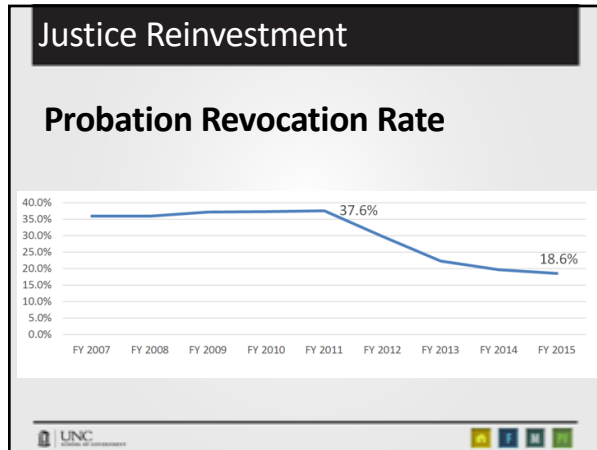
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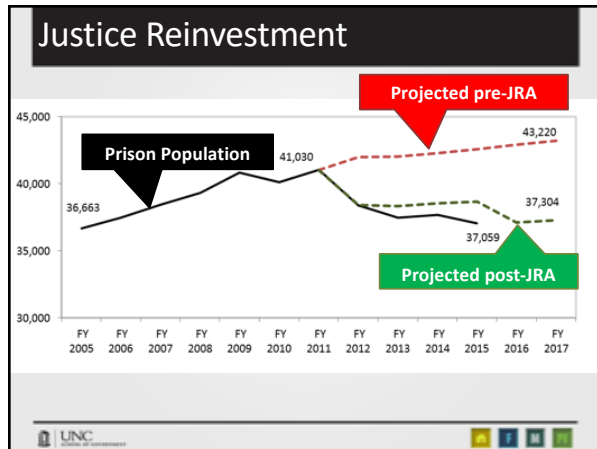
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- ### Notice
- Probationer entitled to 24 hours notice of alleged violations
  - Generally comes from violation report
    - Supervised: DCC-10
    - Unsupervised: AOC-CR-220
  - Notice controls scope of the hearing

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## Notice

Condition of Probation "Possess no firearm, explosive device or other deadly weapon" in that in that

THE OFFENDER WAS IN POSSESSION OF A SILVER COLORED REVOLVER TYPE HANDGUN. THE WEAPON WAS A COPEL MODEL, DETECTIVE 38 SPECIAL. THE WEAPON WAS LOADED WITH 6 ROUNDS OF AMMUNITION. THE DEFENDANT WAS ALSO IN POSSESSION OF A SILVER COLORED KNIFE, WITH A BLADE THAT IS APPROXIMATELY 10" IN TOTAL LENGTH. THE KNIFE ALSO HAD A BASE WITH BRASS KNUCKLE HILT. THE ITEMS LISTED ABOVE WERE FOUND ON JULY 6, 2012 DURING A OFFENDER'S RESIDENCE AT 114 A MEADE ST. AND THE ABOVE LISTED ITEMS WERE FOUND.

Condition of Probation "Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it..." in that

THE DEFENDANT WAS IN POSSESSION OF A LEAFY GREEN SUBSTANCE IN TWO SEPERATE PLASTIC BAGS, THAT IS CONSISTANT WITH MARIJUANA. THE DEFENDANT WAS ALSO IN POSSESSION OF A MULTIPLE, MULTI COLORED PILLS WHICH WERE NOT PROPERLY LABELED OR PACKAGED.

THE DEFENDANT WAS FOUND IN POSSESSION OF THESE ITEMS THROUGH A WARRANTLESS SEARCH OF HIS RESIDENCE, 114A MEADE ST ON 7/6/2012



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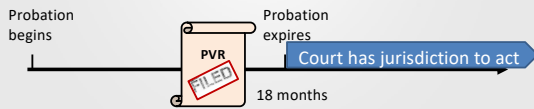
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## Jurisdiction

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



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## Arrest and bail

- 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



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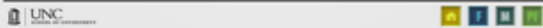
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### Preliminary hearings

- 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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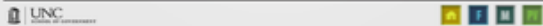
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### Final violation hearings

- Proper venue:
  - Where probation imposed
  - Where violation occurred
  - Where probationer resides
- Class H/I felonies pled in district court
  - By default, violation hearing in superior court
  - May be heard in district court by consent of parties



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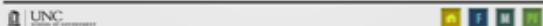
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### Hearing procedure

- Not a formal trial
- Probationer may confront, cross-examine witnesses
- Rules of evidence don't apply
  - Hearsay admissible
  - Exclusionary rule inapplicable
- Proof to judge's "reasonable satisfaction"



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### Hearing procedure

- Violations must be “willful or without lawful excuse”
  - State shows violation
  - Burden shifts to defendant to show “good faith inability to comply”

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### RESPONSE OPTIONS

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### Overview

- Revocation
- CRV
- Quick dip
- Split
- Contempt
- Extension
- Modification
- Transfer to unsupervised
- Termination
- Reinstate

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## Revocation

- Court may revoke probation only for:
  - New criminal offenses
  - Absconding
  - Any technical violation after two CRVs

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## New criminal offense

- “Commit no criminal offense in any jurisdiction”
  - Must there be a conviction first?
- Rule: No violation based on unconvicted conduct *unless* the court makes an independent finding of the criminal activity
- No revocation solely for Class 3 misdemeanor
- Reference to “pending charge” does not spoil a violation report

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## Absconding

- “Not abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising officer.”
  - More than merely failing to report
  - More than merely failing to remain within the jurisdiction

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**North Carolina Criminal Law**  
A UNC School of Government Blog

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**More about What Is and Isn't Absconding**  
Posted on Mar. 3, 2016, 3:19 pm by Jamie Markham • 0 comment



Two new cases from the court of appeals, both involving defendants named Johnson, shed more light on the meaning of "absconding" from probation.

First, recall the basic Justice Reinvestment rule for probation violations: felony probation may be revoked only for a new criminal offense or absconding, or for any violation after a defendant has served two periods of confinement in response to violation. [G.S. 15A-1344\(d2\)](#). Absconding is defined by statute as willfully avoiding supervision or willfully making one's whereabouts unknown to the supervising officer. [G.S. 15A-1343\(b\)\(3a\)](#).

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**Revocation**

- Court may revoke probation only for:
  - New criminal offenses
  - Absconding
  - Any technical violation after two CRVs

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**Confinement in response to violation**

- Felony CRV: 90 days

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### Confinement in response to violation

The slide features a map of North Carolina with three callout boxes. The first box, labeled 'Burke CRV', shows a large, modern building complex. The second box, labeled 'Eastern C.I.', shows a smaller, more industrial-looking facility. The third box, labeled 'Robeson CRV', shows a sign for 'UCHANGEU' in front of a building. The UNC logo and social media icons are at the bottom.

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### Confinement in response to violation

- Permissible in response to violations other than “commit no criminal offense” and “absconding”
- Served continuously (no “weekender” CRV)
- Generally served at **CRV Centers**
  - Cannot be ordered to DART-Cherry/Black Mtn.
- Multiple CRVs must run concurrently
- Felony CRV may not be reduced by jail credit
- After two CRV periods, court may revoke for any violation

UNC logo and social media icons are at the bottom.

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### Upon revocation...

- Judge may reduce sentence within the same grid cell and range
- Judge may change the sentencing judge’s decision on consecutive/concurrent sentences

UNC logo and social media icons are at the bottom.

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### Response Options

- Revocation
- CRV
- Quick dip
- Split
- Contempt
- Extension
- Modification
- Transfer to unsupervised
- Termination
- Reinstate

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### Quick Dips

- 2-3 days of jail confinement
- May be imposed by judge or by probation officer through “delegated authority”
- Misdemeanants: After two quick dips, court may revoke for any technical violation

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### Quick Dips

Year	Usage
2012	0
2013	500
2014	1000
2015	4000
2016	5800
2017	5500

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### Pathways to Revocation Eligibility

- Commit no criminal offense
- Absconding
- Any technical violation after two specified interventions:
  - Felony: 90-day CRV
  - DWI: CRV up to 90 days
  - Pre-12/1/15 Misd: CRV up to 90 days
  - Post-12/1/15 Misd: Quick Dips



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### Response Options

- Revocation
- CRV
- Quick dip
- Split
- Contempt
- Extension
- Modification
- Transfer to unsupervised
- Termination
- Reinstate



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### Special probation (split)

- May be added in response to violation
- Max jail time: ¼ of imposed maximum
- May be served in local jail
- May be served in noncontinuous intervals



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## Contempt

- Up to 30 days in jail
- Chapter 5A procedures apply
  - Proof beyond a reasonable doubt
- Note: Counts for credit if defendant is later revoked (*State v. Belcher*)

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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
  - May happen multiple times

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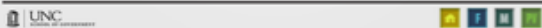
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## Special purpose extensions

- 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 of extension may go beyond the 5-year maximum




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## Extensions

**OTHER MODIFICATIONS OF PROBATION**

1. The 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.)

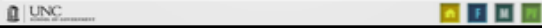
b. with the defendant's consent, pursuant to G.S. 15A-1342(a) or G.S. 15A-1343-2(d). (NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)

**SECTION OF COMMENTARIAL NOTES**

1. The purpose of this section is to provide a means by which the court may extend the term of probation for a defendant who has completed the original term of probation and is still on probation. The extension may be for a period of up to three years beyond the original period of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.

**REVISIONS**

1. The purpose of this section is to provide a means by which the court may extend the term of probation for a defendant who has completed the original term of probation and is still on probation. The extension may be for a period of up to three years beyond the original period of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.




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YouTube video player showing a video titled "Ordinary Extensions 15A-1344(d)".

The video content includes a diagram illustrating the timeline of probation extensions. The diagram shows a horizontal axis representing time, with markers at 0, 24, 30, 36, 48, and 60. A blue arc labeled "36" spans from 24 to 60. Below this, a series of smaller blue arcs represent individual 6-month extensions: one from 24 to 30, one from 30 to 36, one from 36 to 42, and one from 42 to 48. A final arc labeled "12" spans from 48 to 60. The total duration shown is 60 months.

Extending Probation  
James Markham  
501 views  
Published on Apr 13, 2015  
An explanation of the two types of probation extensions in North Carolina.

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### Modification

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



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### Transfer to Unsupervised

- Permissible at any time
- Court may authorize probation officer to transfer defendant upon payment of moneys



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### Termination

- Court may terminate probation at any time
- “Terminate unsuccessfully”



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## Elect to Serve

- Can you allow the defendant to serve his time?
- No longer an option by statute (since 1997)
- Probationer can admit to a violation, but must be a new crime or absconding to authorize revocation



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## Credit upon revocation

- Pre-trial confinement
- Pre-hearing confinement
- Active portions of prior split sentences
  - But NOT electronic house arrest
- DART-Cherry/Black Mountain
  - But NOT private treatment
- Contempt (*State v. Belcher*)
- CRV periods
- Quick dips



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## Appeals

- Defendant may appeal only revocation or imposition of special probation (split)
  - No appeal of other modifications
  - No appeal of CRV. *State v. Romero*.
- Appeals from district court
  - Only for revocation or special probation
  - No right to appeal from district court if violation hearing waived



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### Common pitfalls

- Lack of jurisdiction
- Improper probation period
- Improper extension

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

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### Improper period of probation

- Misdemeanor–Community 6-18 months
- Misdemeanor–Intermediate 12-24 months
- Felony–Community 12-30 months
- Felony–Intermediate 18-36 months

**SUSPENSION OF SENTENCE**  
 Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for \_\_\_\_\_ months.  
 The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).

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### Improper extension

- 1 Feb 2001: 36-month probation
- 1 Feb 2004: probation set to 5 years
- 26 Feb 2004: defendant convicted, 24-month extension (to Feb 2006)
- 9 January 2006: defendant convicted, 24-month extension (to Feb 2008)
- 30 April 2007: Probation revoked

No jurisdiction to  
Goes beyond 5 years;  
not a "special purpose"  
extension

No jurisdiction to  
revoke

State v. Satanek (2008)

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