

SUMMARY OF PROBATION RESPONSE OPTIONS

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- **Terminate probation**
 - Ends probation; permissible at any time. G.S. 15A-1343(b).
 - “Unsuccessful” or “unsatisfactory” termination is not a statutory concept.
- **Transfer to unsupervised probation**
 - Permissible at any time.
 - Court may authorize probation officer to transfer upon payment of moneys. G.S. 15A-1343(g).
- **Modify probation**
 - Add/remove/change conditions; permissible at any time for good cause shown. G.S. 15A-1344(d).
 - Intermediate conditions may be added to a community case upon violation. G.S. 15A-1344(a).
- **Extend probation**
 - Ordinary extension to 5 years, permissible at any time for good cause. G.S. 15A-1344(d).
 - Special purpose extension for up to 3 years beyond original period if:
 - Probationer consents,
 - In last 6 months of original period, and
 - For restitution or medical/psychiatric treatment. G.S. 15A-1343.2; -1342(a).
- **Short-term (2–3 day) jail confinement (“quick dip”)**
 - 2–3 day increments; no more than 6 days/month; in 3 separate months. G.S. 15A-1343(a1)(3).
 - Only for non-DWI offenses committed on/after 12/1/11.
Non-DWI misdemeanor defendants placed on probation on or after December 1, 2015
 - **The defendant is eligible for revocation for any violation committed after he or she has received two quick dips (imposed either by a judge or by a probation officer through delegated authority)**
- **Contempt**
 - Up to 30 days confinement; violation proved beyond a reasonable doubt. G.S. 15A-1344(e1).
 - Contempt confinement counts for credit toward the defendant’s suspended term of imprisonment upon activation. *State v. Belcher*, 173 N.C. App. 620 (2005).
- **Special probation (“split sentence”)**
 - Confinement up to ¼ maximum imposed sentence (DWI: ¼ maximum *authorized* sentence). G.S. 15A-1344(e).
- **Confinement in Response to Violation (CRV, or “dunk”)**
 - In response to a “technical violation” (not a new crime or absconding), confinement of up to 90 days for a misdemeanor or 90 days exactly for a felony (although in no case longer than the defendant’s suspended term of imprisonment). G.S. 15A-1344(d2).
 - CRV may not be served in noncontinuous intervals (e.g., weekends). When a defendant is on probation for multiple offenses, any CRV periods imposed must run concurrently on all cases related to the violation.

- For probation violations on or after October 1, 2014, when CRV is ordered for a felony, no jail credit may be awarded to the 90-day term of incarceration. Credit is instead applied to the suspended term of imprisonment and deducted if probation is revoked. No similar rule applies to misdemeanor CRV. For violations before October 1, 2014, the court is required to apply credit for confinement awaiting a violation hearing to any CRV period ordered.
- After two CRV periods, the court may revoke probation for any violation.

Non-DWI misdemeanor defendants placed on probation on or after December 1, 2015

- **CRV eliminated for Structured Sentencing (non-DWI) misdemeanants. For these defendants, court may instead impose 2–3 day “quick dips” in response to technical violations.**

- **Revocation**

- Activation of a defendant’s suspended sentence, permissible only in response to:
 - Violations of “commit no criminal offense” condition under G.S. 15A-1343(b)(1).
 - A pending charge or uncharged conduct may support a violation of this condition if the probation court makes an independent finding that the criminal activity occurred. *State v. Monroe*, 83 N.C. App. 143 (1986).
 - No revocation solely for conviction of a Class 3 misdemeanor. G.S. 15A-1344(d).
 - Violations of “absconding” condition under G.S. 15A-1343(b)(3a).
 - Only defendants on probation for offenses committed on or after December 1, 2011 are subject to the revocation-eligible absconding condition. *State v. Nolen*, ___ N.C. App. ___, 743 S.E.2d 729 (2013).
 - Any violation by a defendant who has received two CRV periods. G.S. 15A-1344(d2).
 - For non-DWI misdemeanor defendants placed on probation on or after December 1, 2015, any violation after the defendant has received two periods of “quick dip” confinement
- Upon revocation court may:
 - Reduce the suspended sentence within the same grid cell. G.S. 15A-1344(d1).
 - Run the activated sentence concurrently with or consecutively to other sentences. By default, an activated sentence runs concurrently with other sentences to which the defendant is subject. G.S. 15A-1344(d).
- Jail credit: Upon revocation, the defendant must receive credit for:
 - Pretrial confinement
 - The active portion of any split sentence served. *State v. Farris*, 336 N.C. 553 (1994).
 - Time spent at DART-Cherry. *State v. Lutz*, 177 N.C. App. 140 (2006).
 - Time spent imprisoned for contempt. *State v. Belcher*, 173 N.C. App. 620 (2005).
 - Prior CRV confinement. G.S. 15A-1344(d2).
 - Prior “quick dip” confinement imposed by a probation officer or judge.
- There is no law allowing a person to “elect to serve” or “invoke” a suspended sentence.

- **Civil judgments for money**

- Restitution: Docketing permissible in CVRA cases > \$250. G.S. 15A-1340.38.
- Costs/fines: Docketing permissible upon default under G.S. 15A-1365.
- Attorney fees: Docketing as provided in G.S. 7A-455.