

## **Basic Substance Abuse for District Court Judges**

### Adult Sentencing Options Related to Substance Abuse

Jamie Markham, *School of Government*  
markham@sog.unc.edu  
(919) 843-3914

- **As regular conditions of probation, the defendant must not use, possess, or control any controlled substance, and must supply a breath, urine, or blood specimen when instructed.**

§ 15A-1343. Conditions of probation.

(b) Regular Conditions. - As regular conditions of probation, a defendant must:

- (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
- (16) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice of the Department of Public Safety for the actual costs of drug or alcohol screening and testing.

- **The judge can order substance abuse assessment, monitoring, or treatment as a condition of probation. The judge may also order abstention from alcohol, monitored by CAM.**

§ 15A-1343. Conditions of probation.

(a1) Community and Intermediate Probation Conditions. - In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

- (4) Substance abuse assessment, monitoring, or treatment.
- (4a) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

- **The judge can order a defendant to a residential program as a condition of probation. (Since 2011, a residential program is no longer an “intermediate” punishment.)**

§ 15A-1343. Conditions of probation.

(b1) Special Conditions. - In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- (2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

- **DART-Cherry (for men) and the Black Mountain Substance Abuse Treatment Center for Women are the state's two residential substance abuse treatment programs for probationers. A defendant must be screened and assessed before participating in DART-Cherry or Black Mountain.**

§ 15A-1343. Conditions of probation.

(b3) Screening and Assessing for Chemical Dependency. - A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) or the Black Mountain Substance Abuse Treatment Center for Women operated by the Division of Adult Correction of the Department of Public Safety must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment.

- **For intermediate probationers, or community probationers who have violated, the court may order drug treatment court, either as a condition of a sentence or as part of a deferred prosecution (G.S. 15A-1341(a2)).**

§ 15A-1340.11. Definitions.

...

(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. It may include **drug treatment court**, special probation as defined in G.S. 15A-1351(a), and one or more of the conditions set forth in G.S. 15A-1343(a1).

- **For an intermediate probationer or impaired driver, a judge may order that a split sentence be served in a treatment facility.**

§ 15A-1351. Sentence of imprisonment; incidents; special probation

(a) If imprisonment is for continuous periods, the confinement may be in the custody of either the Division of Adult Correction of the Department of Public Safety or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or **treatment facility**.

§ 15A-1344. Special Probation in Response to Violation

(e) Special Probation in Response to Violation. - When a defendant has violated a condition of probation, the court may modify the probation to place the defendant on special probation . . . . Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or **treatment facility**.

- **A probation officer can require substance abuse assessment, monitoring, or treatment through delegated authority (either in response to a violation, or for “high risk” offenders), or as an “intermediate condition.”**

§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.

(e) Delegation to Probation Officer in Community Punishment. - Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to community punishment to do any of the following:

(3) Submit to substance abuse assessment, monitoring or treatment.

(f) Delegation to Probation Officer in Intermediate Punishments. - Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to intermediate punishment to do any of the following:

(3) Submit to substance abuse assessment, monitoring or treatment, including continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a term of probation.

§ 15A-1343. Conditions of probation.

(b4) Intermediate Conditions. - The following conditions of probation apply to each defendant subject to intermediate punishment:

(2) Not use, possess, or control alcohol.

(4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

- **Drug Education School is discretionary under G.S. 90-96(a), but mandatory (absent extenuating circumstances) under G.S. 90-96(a1).**

§ 90-96. Conditional discharge for first offense.

(a) . . . To fulfill the terms and conditions of probation the court **may** allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services or in the Treatment for Effective Community Supervision Program under Subpart B of Part 6 of Article 13 of Chapter 143B of the General Statutes.

(a1) . . . . The probation, if imposed, shall be for not less than one year and **shall** contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the

Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

- **Time spent in state-run residential substance abuse treatment counts for jail credit; private treatment does not.**

A defendant must receive credit for time spent at DART–Cherry as a condition of probation. State v. Lutz, 177 N.C. App. 140 (2006).

A defendant should not receive credit for time spent at a privately run residential treatment program as a condition of probation (in a non-DWI case). State v. Stephenson, 213 N.C. App. 621 (2011).

- **Substance abuse treatment is not “medical or psychiatric treatment” within the meaning of G.S. 15A-1343.2(d), and it is therefore not a proper basis on which to extend probation pursuant to a “special purpose” extension. State v. Peed, 810 S.E.2d 777 (2018).**