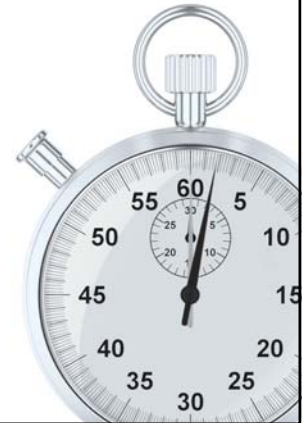


Probation Violations

Jamie Markham
October 2018



www.sog.unc.edu



Before 2011

- A court could revoke probation for any violation of probation

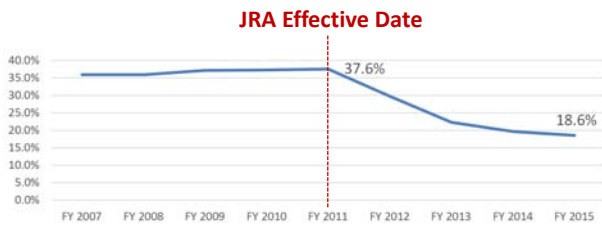


2011: Justice Reinvestment

- Court may revoke only for new crimes and absconding
- Confinement in Response to Violation (CRV) up to 90 days permissible for all other violations
- Revocation permissible for any violation after two CRVs



Probation Revocation Rate



2011 to 2015

- CRV is a poor fit for misdemeanors
 - Most CRVs are **Terminal CRVs**

2015 Amendments

- CRV repealed for misdemeanants placed on probation after 12/1/2015
- Revocation permissible for any violation after two Quick Dips (which may be imposed by judge or by probation officer)

Eligibility for Revocation

- New crimes & absconding
 - Any probationer: Upon first violation
- Technical violations
 - **Felony:** Two prior CRVs (90 days)
 - **DWI:** Two prior CRVs (up to 90 days)
 - **Pre-12/1/15 Misd:** Two prior CRVs (up to 90 days)
 - **Post-12/1/15 Misd:** Two prior Quick Dips (2-3 days, imposed by judge or probation officer)

Felony	Non-DWI Misdemeanor Placed On Probation			DWI
	Before 12/1/15	On/After 12/1/15		
RESTRICTIONS TO PROBATION G.S. 15A-1343.2	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
CLASS 3 MISDEMEANOR G.S. 15A-1343.3	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
CLASS 2 MISDEMEANOR G.S. 15A-1343.4	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
CLASS 1 MISDEMEANOR G.S. 15A-1343.5	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.6	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.7	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.8	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.9	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.10	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.11	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.12	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.13	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.14	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.15	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.16	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.17	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.18	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.19	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.
RESTRICTIONS TO PROBATION G.S. 15A-1343.20	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.	Has not been convicted of any offense while on probation.

New criminal offense

- “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

Absconding

“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)

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

Quick Dips

- 2-3 days of jail confinement
 - No more than 6 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”



STATE OF NORTH CAROLINA

ORDER ON VIOLATION OF PROBATION

3. Submit to the following period(s) of confinement in local confinement facility). and pay jail fees. The **NOTE:** Periods of confinement imposed here must be for no more than three separate months during the period of probation.

Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days
Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days
Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days

IMPOSED MONETARY CONDITIONS

17

The probation officer, being duly sworn, states that the defendant was placed on probation pursuant to the following Judgment: Suspending Sentence

Date of Judgment	County	Court of Origin	File No.	Offense	Counts
04/02/2015	DIST	IREDELL	14055742	POSSESSOR SCHEDULE II	001

Length of Sentence Min: 0YR 0MO 0DY Max: 0YR 17MO 0DY
Length of Term of Probation: 0 YRS. 12 MOS. 0 DYS.
Sentencing Judge: BROWN, DEBORAH

***THE DEFENDANT HAS PREVIOUSLY SERVED 0 PERIODS OF CONFINEMENT IN RESPONSE TO VIOLATIONS. ***

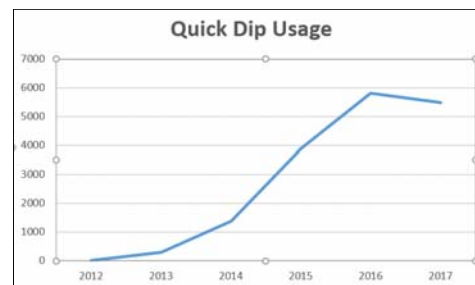
THE DEFENDANT HAS THE FOLLOWING 2 OR 3 DAY PERIODS OF CONFINEMENT. *
3 day(s) in March were ordered with delegated authority
3 day(s) in April were ordered with delegated authority

THE DEFENDANT ABSCONDED SUPERVISION ON 12/14/15 BY MAKING HIS WHEREABOUTS UNKNOWN TO THIS OFFICER. ON OR ABOUT 12/14/15, THE OFFICER WAS ADVISED THAT THE OFFENDER DID NO LONGER RESIDE AT THE RESIDENCE GIVEN. THE DEFENDANT HAS BEEN ADVISED SUPERVISION AND MAKE HIMSELF UNAVAILABLE FOR SUPERVISION; THEREFORE ABSCONDED SUPERVISION.

2. 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 TEST POSITIVE FOR MARIJUANA ON 6/16/2015.

3. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places..." in that THE DEFENDANT FAILED TO REPORT ON 11/4/2015 AT 11:00AM.

Quick Dips by Probation Officers



17

The probation officer, being duly sworn, states that the defendant was placed on probation pursuant to the following Judgment Suspending Sentence

Date of Judgment	County	File No.	Offense	Counts
04/02/2015 DIST	IREDELL	14055742	POSSESS SCHEDULE II	001

Length of Term of Probation: 0 YRS. 12 MOS. 0 DYS.
Sentencing Judge: BROWN, DEBORAH

THE DEFENDANT HAS PREVIOUSLY SERVED 0 PERIODS OF CONFINEMENT IN RESPONSE TO VIOLATIONS.

THE DEFENDANT HAS THE FOLLOWING 2 OR 3 DAY PERIODS OF CONFINEMENT.*
3 day(s) in March were ordered with delegated authority
3 day(s) in April were ordered with delegated authority

THE DEFENDANT ABANDONED SUPERVISION ON 12/14/15 BY MAKING HIS WHEREABOUTS UNKNOWN TO THIS OFFICER. ON OR ABOUT 12/14/15, THE OFFICER WAS ADVISED THAT THE OFFENSE DID NO LONGER RESIDE AT THE RESIDENCE GIVEN. THE DEFENDANT HAS HAD AVOIDED SUPERVISION AND MADE HIMSELF UNAVAILABLE FOR SUPERVISION; THEREFORE ABANDONING SUPERVISION.

2. 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 TEST POSITIVE FOR MARIJUANA ON 8/18/2015.

3. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places..." in that THE DEFENDANT FAILED TO REPORT ON 11/4/2015 AT 11:00AM.

Probation Response Options					
Type of Violation/Response					
Response	When to Use	When to Use	When to Use	When to Use	When to Use
REVOCATION	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.
CRV	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.
QUICK DIP	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.
SPLIT	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.	When the defendant has violated probation and the violation is a criminal offense, or when the defendant has violated probation and the violation is a technical violation and the defendant has a pending criminal charge.

A defendant was placed on probation for Communicating Threats in 2017. He has a 60-day suspended sentence. The defendant admits to two violations (there are no prior violations):

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

Which responses are permissible?

- Revocation?
- CRV?
- Quick dip?
- Split?

A defendant was placed on probation for DWI in 2017. 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 10/13/17 THE DEFENDANT WAS CHARGED WITH POSSESSION OF FIREARM BY FELON IN 17CRS705617 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?
- CRV?
- Quick dip?
- Split?

Some Recurrent Issues

Improper Probation Period

- 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).

Extending Probation

- Two types: *ordinary* and *special purpose*

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
 - By policy, Probation no longer seeks extensions out of court

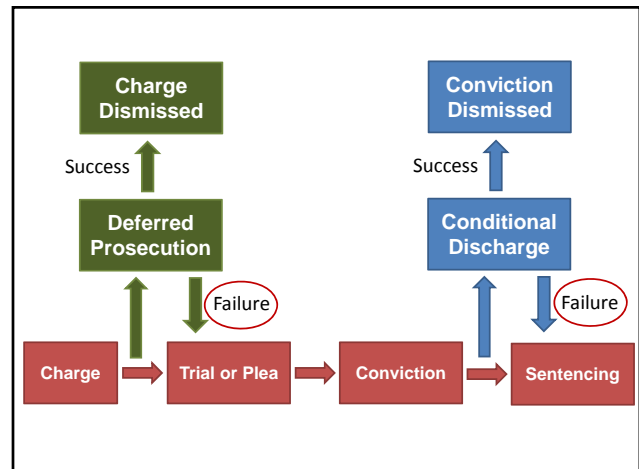
Special Purpose Extensions

- 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 has a 5-year maximum

Does not include substance abuse treatment. State v. Peed (2018)

Violations in Diversion Cases

- Deferred prosecution
- Conditional discharge



“Revocation” in Diversion Cases

- **Deferred prosecution**
 - **G.S. 15A-1344(d)**. If a probationer violates a condition of probation . . . the court . . . may order that charges as to which prosecution has been deferred be brought to trial.



“Revocation” in Diversion Cases

- **Conditional Discharge**
 - **G.S. 15A-1341(a6)**. Upon violation of a term or condition of a conditional discharge granted pursuant to this section, the court may enter an adjudication of guilt and proceed as otherwise provided.
 - **G.S. 90-96(a)**. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.



Violations in Diversion Cases

- But... in general, violation hearings in diversion cases follow ordinary probation violation rules
- “In the absence of a provision to the contrary, and except where specifically excluded, the general probation provisions found in Article 82 of Chapter 15A apply to probation imposed under G.S. 90-96.” *State v. Burns*, 171 N.C. App. 759 (2005).



Violations in Diversion Cases

- Distinctions
 - Two-year maximum probation period
 - No confinement-based sanctions
 - Best to return to district of origin



The Limbo Problem

- **“Upon violation** of a term or condition of a conditional discharge granted pursuant to this section, the court may enter an adjudication of guilt and proceed as otherwise provided. **Upon fulfillment** of the terms and conditions of a conditional discharge granted pursuant to this section, any plea or finding of guilty previously entered shall be withdrawn and the court shall discharge the person and dismiss the proceedings against the person.”
— G.S. 15A-1341(a6)



The Limbo Problem

- **“Immunity from Prosecution upon Compliance.** Upon the expiration or early termination as provided in subsection (b) of a period of probation imposed after deferral of prosecution and before conviction or a conditional discharge, the defendant shall be immune from prosecution of the charges deferred or discharged and dismissed.”
— G.S. 15A-1342(i)



Class H and I Felonies

- For felonies pled in district court, violation hearings are, by default, in superior court
- May be held in district court with the consent of the State and the defendant
- If held in district court, appeal is to superior court. State v. Hooper, 358 N.C. 122 (2004)



Willfulness

- No imprisonment if defendant shows nonpayment was in spite of a good faith effort to pay



Appeals

- 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”

FINDINGS

After considering the record contained in the files numbered above, together with the evidence presented by the parties and the statements made on behalf of the State and the defendant, the Court finds:

- The defendant is charged with having violated specified conditions of the defendant's probation as alleged in the:
 - a. Violation Report(s) on file herein, which is incorporated by reference.
 - b. Notice of Hearing on Violation Of Unsupervised Probation on file herein, which is incorporated by reference.
- Upon due notice or waiver of notice (check a. or b.):
 - a. a hearing was held before the Court and, by the evidence presented, the Court is reasonably satisfied in its discretion that the defendant violated each of the conditions of the defendant's probation as set forth below.
 - b. the defendant waived a violation hearing and admitted that he/she violated each of the conditions of his/her probation as set forth below.
- The condition(s) violated (the facts of each violation are as set forth (check all that apply)):
 - a. in Paragraph(s) _____ of the Violation Report or Notice dated _____
 - b. in Paragraph(s) _____ of the Violation Report or Notice dated _____
 - c. on the attached _____
- Each of the conditions of the defendant's probation is valid; the defendant violated each condition willfully and without valid excuse; and each violation is a separate and distinct violation.

The defendant waived a violation hearing and admitted that he/she violated each of the conditions of his/her probation



Questions?

