

Probation Violations

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Before 2011

- A court could revoke probation for any violation of probation



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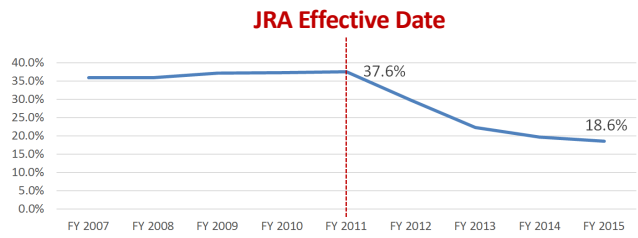
After Justice Reinvestment

- 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”



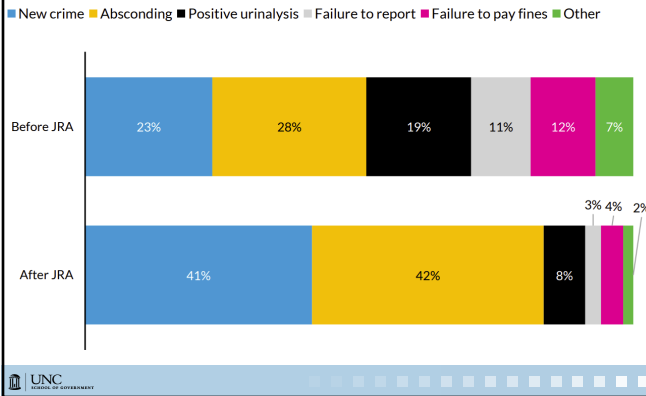
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Probation Revocation Rate



4

Reasons for Revocation



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“Good Cause” in Expired Cases

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

G.S. 15A-1344(f)

(f) Extension, Modification, or Revocation after Period of Probation. – The court may extend, modify, or revoke probation after the expiration of the period of probation if all of the following apply:

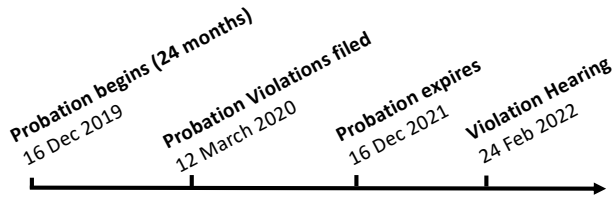
- (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
- (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.

(3) The court finds for good cause shown and stated that the probation should be extended, modified, or revoked

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

- To preserve jurisdiction to act on a case after it has expired, the court must find a violation, and then also make a finding of **“good cause shown and stated”** that probation should be extended, modified, or revoked

State v. Jackson (N.C. App. 2023)



- Trial court finds violation, extends probation
- Order lacked **finding of good cause**
- **COA: Vacate and remand**

Vacated for Lack of Good Cause Finding

- State v. Carpenter, 900 S.E.2d 239 (2024)
- State v. Hammond, 900 S.E.2d 417 (2024)
- State v. Leggette, 898 S.E.2d 383 (2024)
- State v. Pratt, 896 S.E.2d 761 (2024)
- State v. Jackson, 291 N.C. App. 116 (2023)
- State v. Black, 290 N.C. App. 679 (2023) (G.S. 90-96 case)
- State v. McSpadden, 290 N.C. App. 553 (2023)
- State v. Parry, 290 N.C. App. 367 (2023)
- State v. Lytle, 287 N.C. App. 657 (2023)

Sufficient Good Cause: *Geter*

- State v. Geter, 383 N.C. 484 (2022)
- Defendant's probation case expired after a probation violation had been filed for a pending criminal charge.

Good Cause: Geter

Trial court oral finding: "It is clear to the [c]ourt that the State waited until disposition of the underlying offenses alleged before proceeding with the probation violation. The [c]ourt would find that this would constitute good cause."

Good Cause: Geter

Court further Orders: (check all that apply)

1. The Clerk of Superior Court, under G.S. 7A-304(d), shall immediately reimburse any undisbursed monies paid by the defendant under the Judgment Suspending Sentence, as provided in that Judgment. In addition, the defendant shall pay to the Clerk the "Total Amount Due" below.

Restitution Balance	Fine Balance	Restitution Balance*	Prior Atty Fees This Case	Atty Fees This Proceeding	Appt Fees/Info	Total Amount Due
\$ 0.00	\$ 0.00	\$	\$	\$ 0.00	\$ 0.00	\$ 250.00

* Attached Restitution Update Worksheet, Notice and Findings (Revocation Or Termination Of Probation), ACC-CR-618, which is incorporated by reference. ACC-CR-618 must be completed whenever Recommendation No. 4 below is checked. Given if Recommendation No. 4 is not checked, ACC-CR-618 must be completed in EVERY CASE in which Restitution was entered in the original Judgment Suspending Sentence, as a condition of probation, to pay restitution in an amount in excess of \$500 to a Victim Rights Act victim.

2. The Court finds just cause to waive costs, as ordered on the attached ACC-CR-618. Other:

3. Any allegation of a violation stated in the Violation Report, Notice or otherwise which is not set forth in Finding No. 3 below is dismissed.

4. Other:

07/15/2020: COURT FINDS AND CONCLUDES GOOD CAUSE EXISTS TO REVOKE DEFENDANT'S PROBATION DESPITE THE EXPIRATION OF HIS PROBATIONARY PERIOD; JUDGMENT REMANDED FROM COURT OF APPEALS FOR FURTHER FINDINGS; THIS JUDGMENT SHALL BE NUNC PRO TUNC TO 04/04/2019

Court Recommendations:

1. Substance abuse treatment. 2. Psychiatric and/or psychological counseling. 3. Work release should should not be granted.

Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above. but the Court does not recommend restitution be paid as a condition of post-release supervision. from work release earnings.

5. Other:

State v. Geter

Supreme Court: "The trial court complied with the provisions of N.C.G.S. § 15A-1344(f) and therefore possessed the jurisdiction to revoke defendant's probation after his term of probation had expired."

Good Cause?

The Court further Orders: (check all that apply)

1. The Clerk of Superior Court, under G.S. 7A-304(d), shall immediately disburse any undisbursed monies paid by the defendant under the Judgment Suspending Sentence, as provided in that Judgment. In addition, the defendant shall pay to the Clerk the "Total Amount Due" below.

Costs Balance	Fine Balance	Restitution Balance	Prior Atty Fees This Case	Atty Fees This Proceeding	Appl Fwd/Rtc	Total Amount Due
\$	\$	\$	\$	\$ 0.00	\$	\$

*See attached "Restitution Update Worksheet, Notice and Findings (Revocation Or Termination Of Probation)," AOC-CR-612, which is incorporated by reference. NOTE: AOC-CR-612 must be completed whenever Recommendation No. 4 below is checked. Even if Recommendation No. 4 is not checked, AOC-CR-612 must be completed in EVERY CASE in which the defendant was sentenced in the original Judgment Suspending Sentence, as a condition of probation, to any violation in an amount in excess of \$250 to a Victim Rights Act victim.

2. The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other:

3. Any allegation of a violation stated in the Violation Report, Notice or otherwise which is not set forth in Finding No. 3 below is dismissed.

4. **REMAINING MONIES TO BE PLACED AS A CIVIL JUDGMENT; COURT FINDS GOOD CAUSE TO PROCEED WITH HEARING OUTSIDE PERIOD OF PROBATION.**

The Court recommends:

1. Substance abuse treatment. 2. Psychiatric and/or psychological counseling. 3. Work release should should not be granted.

4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.

5. Other:

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Good Cause

"As in *Geter*, the trial court here made an oral finding of good cause: 'I would also find that his probation has expired, but there's good cause to address it following the expiration of his probation.' Additionally, the trial court made a written finding of good cause in the judgment. The revocation hearing occurred ... five days after the expiration of defendant's probation, and the State presented evidence that tended to show defendant absconded.... Given these facts ... we do not conclude that it was 'arbitrary, capricious, or offended substantial justice' for the trial court to find good cause...."

State v. Roberts, 897 S.E.2d 42 (N.C. App. 2024)

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Good Cause?

5. based upon enhancement pursuant to: violence. G.S. 14-50.22 (gang).

For Good Cause Shown, and Based upon the Findings of Fact set out on the reprobation upon which the execution of the active criminal contempt is not appropriate, and the Court be activated, and the defendant be imprisoned:

STATE OF NC
SUPERIOR COURT
COUNTY OF _____
CASE NO. _____
STATE OF NC v. _____

RECOMMENDATION
I, _____, Clerk of Superior Court, do hereby recommend that the Court find that the defendant is not a danger to the community and that the defendant be released on probation.

REASON AND ORDER
The Court finds that the defendant is not a danger to the community and that the defendant be released on probation.

APPROVED AND ORDERED:
Clerk of Superior Court

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Good Cause

“Defendant takes issue with the fact that ‘neither the prosecutor nor the judge stated what the good cause was[,]’ with the trial court only having specified that good cause existed. However, we do not read *Geter, Morgan*, or N.C.G.S. § 15A-1344(f) as requiring that the trial court specify what it found to constitute good cause, only that good cause exist.”

State v. Harris, 897 S.E.2d 552 (2024)



Good Cause

- Identify expired or “discontinued” cases
- If there is good cause, be sure to make a finding
 - Need not be detailed
 - There is no check-box
- You have broad discretion
 - Violations filed near expiration
 - Pending charges
 - Continuances
 - Absconding



Notice of Alleged Violations

Notice of Violations

G.S. 15A-1345. (e) Revocation Hearing. - Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings.

The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged.

State v. Bowman (N.C. App., 2023)

1. Sex Offender Special Condition. Per [D]efendant's judgment, he is "not to have any pornography adult or child." On [20 April 2022] [D]efendant admitted to his counselor with C.A.S.A. that he had downloaded child abuse material to his telephone. During a home contact on [22 April 2022], the offender admitted to this officer that he had viewed child pornography on his girlfriend's cellphone (estimated time frame was a month prior). This officer contacted the Forsyth County Sherriff's office about it.

State v. Bowman (N.C. App., 2023)

- At the violation hearing, the State argued that this was a new criminal offense violation
- Trial court revoked probation based on new criminal offense (third-degree sexual exploitation of a minor)
- **COA:** Violation report's description of alleged behavior sufficed to give defendant notice of possible revocation

State v. Bowman (N.C. App., 2023)

- Trial court revoked probation based on uncharged conduct (child pornography possession) that was alleged as a technical violation
- **COA:** Defendant’s admission to downloading and viewing child pornography sufficed to reasonably satisfy the trial court of its independent findings of a criminal offense

“Commit no Criminal Offense” Violations

New criminal offense

- “The mere fact that a probationer is charged with certain criminal offenses is insufficient to support a finding that he committed them. However, a defendant need not be convicted of a criminal offense in order for the trial court to find that a defendant violated [the ‘commit no criminal offense’ condition].” State v. Hancock, 248 N.C. App. 744 (2016)

State v. Singletary (N.C. App., 2023)

- Defendant on felony probation for obtaining property by false pretenses
- Charged with uttering a forged instrument

New criminal offense?

the conditions of probation imposed in that judgment, the defendant fully violated:
General Statute 15A-1343(b)(1) "Commit no criminal offense in any jurisdiction" in that
OFFENDER WAS ARRESTED AND CHARGED WITH FELONY UTTERING A FORGED INSTRUMENT ON 02/28/2022. OFFENSE DATE 08/31/21 AT THE STATE EMPLOYEE'S CREDIT UNION IN WAKE COUNTY CASE 22CR201479.

State v. Singletary (N.C. App., 2023)

- At the violation hearing, the State submitted the following evidence:
 - Security camera images of defendant at SECU
 - Images of defendant at SECU drive-up ATM
 - Warrants charging the new offenses, which said the attempted deposit was a check on a known closed account belonging to the defendant
 - PPO testified that she talked to a detective who said the photos confirmed defendant was at the credit union, wrote a check, and took funds

State v. Singletary (N.C. App., 2023)

- **COA:** The evidence presented gave adequate support for the trial court’s independent finding
 - The details in the violation report itself
 - Officer testimony (more about that in a moment)
 - Trial court consideration of images from SECU
- “A probation revocation hearing is not a trial, and the State need not present evidence sufficient to convict Defendant nor call as witnesses the investigating officers of the crimes alleged.”

Absconding

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)

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

Absconding

the conditions of probation imposed in that judgment, the de
lfully violated:
Regular Condition of Probation: General
Statute 15A-1343(b)(3a) "Not to abscond, by
willfully avoiding supervision or by willfully
making the supervisee's whereabouts unknown to
the supervising probation officer" in that,
THE DEFENDANT HAS FAILED TO REPORTS AS DIRECTED BY THE
OFFICER, HAS FAILED TO RETURN THE OFFICERS PHONE CALLS, AND
HAS FAILED TO PROVIDE THE OFFICER WITH A CERIFIABLE ADDRESS
THE DEFENDANT HAS FAILED TO MAKE HIMSELF AVAILABLE FOR
SUPERVISION AS DIRECTED BY HIS OFFICER, THEREBY ABSCONDING
SUPERVISION. THE OFFICERS LAST FACE TO FACE CONTACT WITH THE
OFFENDER WAS DURING A HOME CONTACT ON 4/16/18.

State v. Crompton (N.C., 2020)

"As a practical matter, those conditions laid out in Section 15A-1343(b)(3) make up the necessary elements of "avoiding supervision" or "making [one's] whereabouts unknown." A defendant cannot avoid supervision without failing to report as directed to his probation officer at reasonable times and places. Neither can a defendant make his whereabouts unknown without failing to answer reasonable inquiries or notify his probation officer of a change of address."

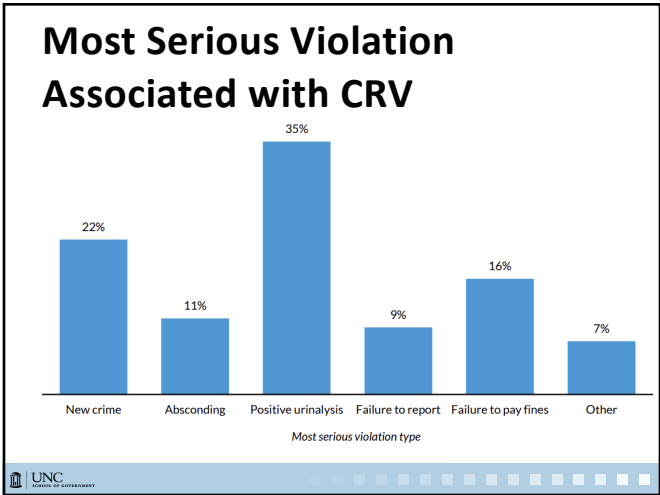
State v. Crompton (N.C., 2020)

“Defendant's probation officer testified that he went to Defendant's last known residence twice, called all of Defendant's references and contact numbers, called the local hospital, checked legal databases to see whether Defendant was in custody, and called the vocational program Defendant was supposed to attend. ... Defendant never made contact with his probation officer, and the officer was completely unaware of Defendant's whereabouts from at least May 14, 2018 to May 23, 2018.”

State v. Crompton (N.C., 2020)

“The State's evidence was more than sufficient to allow for the reasonable inference that Defendant was not only aware his probation officer was attempting to contact him over the course of ten days, but that Defendant knew how to contact his probation officer and willfully failed to make himself available for supervision. Thus, the evidence was sufficient to reasonably satisfy the trial court, in the exercise of its sound discretion, that Defendant violated Section 15A-1343(b)(3a), a condition upon which probation can be revoked.”

Confinement in Response to Violation (CRV)



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Most Serious Violation Associated with CRV

G.S. 15A-1344(d2) Confinement in Response to Violation. - When a defendant under supervision for a felony conviction **has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a)**, the court may impose a period of confinement of 90 consecutive days to be served in the custody of the Division of Community Supervision and Reentry of the Department of Adult Correction.

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Confinement in Response to Violation (CRV)

- Permissible in response to violations other than “commit no criminal offense” and “absconding”
- Length:
 - Felony: 90 days (do not apply jail credit)
 - DWI: Up to 90 days
 - No CRV for misdemeanors

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CRV (cont.)

- Must be continuous period (no “weekend CRV”)
- Must be to proper place of confinement
 - DAC for felonies (Lumberton/N. Piedmont)
 - SMCP for DWI
- CRV periods ordered in multiple probation cases must run concurrently
- Maximum of 2 CRVs per case (revocation-eligible after that)

“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
- Terminal splits?

Extensions

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
 - Could happen multiple times

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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 may go beyond the 5-year maximum

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Probation Confrontation

- A proceeding to revoke probation is not a criminal prosecution, [therefore] a Sixth Amendment right to confrontation in a probation revocation hearing does not exist.” State v. Hemingway, 278 N.C. App. 538 (2021).

Appeals

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
- No de novo appeal to superior court if violation hearing “waived”
- After appeal, case remains in superior court

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

Jurisdiction: Authority in Conditional Discharge Cases

District Court Felonies

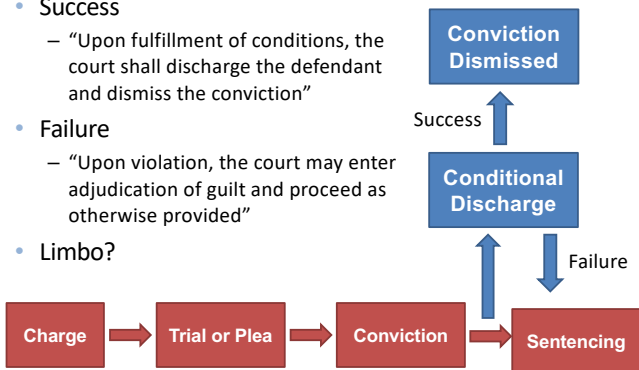
- Class H and I felonies pled in district court
 - By default, violation hearing is in superior court. G.S. 7A-271(e)
 - With consent, may be held in district court
 - Appeal of a violation hearing held in district court is de novo to superior court. State v. Hooper, 358 N.C. 122 (2004)
 - *Exception:* In local judicially managed accountability and recovery court cases, if the district court revokes probation, appeal is to the appellate division. G.S. 7A-271(f).

District Court Felonies

- **2023 legislative clarification:** In conditional discharge cases, superior court has jurisdiction to hold revocation hearing *and* to enter judgment and sentence Class H or I felony case originating in district court. G.S. 7A-271(e); 15A-1341(a6)

Conditional Discharge “Limbo”

- Success
 - “Upon fulfillment of conditions, the court shall discharge the defendant and dismiss the conviction”
- Failure
 - “Upon violation, the court may enter adjudication of guilt and proceed as otherwise provided”
- Limbo?



Limbo

- When conditional discharge probation expires, the defendant is “immune from prosecution of the charges deferred or discharged and dismissed.” G.S. 15A-1342(i).
- However, G.S. 15A-1341(a6) says you discharge a defenat “[u]pon fulfillment of the terms and conditions of a conditional discharge.”

Limbo

- State v. Hilgert, 866 S.E.2d 532 (2021) (unpublished)
“The State argues Defendant's charge cannot be discharged and dismissed because ... Defendant did not fulfill the obligations of his side of the contract. ... We disagree. ... If the State wanted to extend, modify, or revoke Defendant's probation, it needed to do so. ... The State did neither of these things. Thus, G.S. 15A-1342(i) controls.”