

**§ 15A-1344. Response to violations; alteration and revocation.**

(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2). Imprisonment may be imposed pursuant to G.S. 15A-1344(d2) for a violation of a requirement other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially.

(a1) Authority to Supervise Probation in Drug Treatment Court. – Jurisdiction to supervise, modify, and revoke probation imposed in cases in which the offender is required to participate in a drug treatment court or a therapeutic court is as provided in G.S. 7A-272(e) and G.S. 7A-271(f). Proceedings to modify or revoke probation in these cases must be held in the county in which the drug treatment court or therapeutic court is located.

(b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. – If the sentencing judge has entered an order to limit jurisdiction to consider a sentence of unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation may be reduced, terminated, continued, extended, modified, or revoked only by the sentencing judge or, if the sentencing judge is no longer on the bench, by a presiding judge in the court where the defendant was sentenced.

(b1) Service of Notice of Hearing on Violation of Unsupervised Probation. –

- (1) Notice of a hearing in response to a violation of unsupervised probation shall be given either by personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender. The notice shall be mailed at least 10 days prior to any hearing and shall state the nature of the violation.
- (2) If notice is given by depositing the notice in the United States mail, pursuant to subdivision (1) of this subsection, and the defendant does not appear at the hearing, the court may do either of the following:
  - a. Terminate the probation and enter appropriate orders for the enforcement of any outstanding monetary obligations as otherwise provided by law.
  - b. Provide for other notice to the person as authorized by this Chapter for further proceedings and action authorized by Article 82 of Chapter 15A of the General Statutes for a violation of a condition of probation.

If the person is present at the hearing, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for a violation of a condition of probation.

(c) Procedure on Altering or Revoking Probation; Returning Probationer to District Where Sentenced. – When a judge reduces, terminates, extends, modifies, or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and any other records to the court where probation was originally imposed. A court on its own motion may return the probationer to the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation. In cases where the probation is revoked in a county other than the county of original conviction the clerk in that county must issue a commitment order and must file the order revoking probation and the commitment order, which will constitute sufficient permanent record of the proceeding in that court, and must send a certified copy of the order revoking probation, the commitment order, and all other records pertaining thereto to the county of original conviction to be filed with the original records. The clerk in the county other than the county of original conviction must issue the formal commitment to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(d) Extension and Modification; Response to Violations. – At any time prior to the expiration or termination of the probation period or in accordance with subsection (f) of this section, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. A hearing extending or modifying probation may be held in the absence of a defendant who fails to appear for the hearing after a reasonable effort to notify the defendant. If a probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue the defendant on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing, if any, or may order that charges as to which prosecution has been deferred be brought to trial; provided that probation may not be revoked solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period.

(d1) Reduction of Initial Sentence. – If the court elects to reduce the sentence of imprisonment for a felony, it shall not deviate from the range of minimum durations established in Article 81B of this Chapter for the class of offense and prior record level used in determining the initial sentence. If the presumptive range is used for the initial suspended sentence, the reduced sentence shall be within the presumptive range. If the mitigated range is used for the initial suspended sentence, the reduced sentence shall be within the mitigated range. If the aggravated range is used for the initial suspended sentence, the reduced sentence shall be within the aggravated range. If the court elects to reduce the sentence for a misdemeanor, it shall not deviate from the range of durations established in Article 81B for the class of offense and prior conviction level used in determining the initial sentence.

(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 Adult Correction and Juvenile Justice of the

Department of Public Safety. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. The 90-day term of confinement ordered under this subsection for a felony shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence. However, if the time remaining on the maximum imposed sentence on a defendant under supervision for a felony conviction is 90 days or less, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction sentenced pursuant to Article 81B of Chapter 15A of the General Statutes 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 pursuant to G.S. 15A-1343(a1)(3). The court may not revoke probation unless the defendant has previously received at least two periods of confinement for violating a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). Those periods of confinement may have been imposed pursuant to G.S. 15A-1343(a1)(3), 15A-1343.2(e)(5), or 15A-1343.2(f)(6). The second period of confinement must have been imposed for a violation that occurred after the defendant served the first period of confinement. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction not sentenced pursuant to Article 81B of Chapter 15A of the General Statutes 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 up to 90 consecutive days to be served where the defendant would have served an active sentence. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

The period of confinement imposed under this subsection on a defendant who is on probation for multiple offenses shall run concurrently on all cases related to the violation. Confinement shall be immediate unless otherwise specified by the court.

(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 as provided in this subsection. In placing the defendant on special probation, the court may continue or modify the conditions of probation and in addition require that the defendant submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the rules and regulations of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Division of Adult Correction and Juvenile Justice 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. Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not

including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.

(e1) Criminal Contempt in Response to Violation. – If a defendant willfully violates a condition of probation, the court may hold the defendant in criminal contempt as provided in Article 1 of Chapter 5A of the General Statutes. A finding of criminal contempt by the court shall not revoke the probation. If the offender serves a sentence for contempt in a local confinement facility, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall pay for the confinement at the standard rate set by the General Assembly pursuant to G.S. 148-32.1(a) regardless of whether the offender would be eligible under the terms of that subsection.

(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.40(a)(1) or G.S. 14-208.40(a)(2) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation.

(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.
- (4) If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under G.S. 15A-1342(a).

(g) Repealed by Session Laws 2011-62, s. 3, as amended by Session Laws 2011-412, s. 2.2, effective December 1, 2011, and applicable to persons placed on probation on or after December 1, 2011. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 11, 11A, 13A; 1979, c. 749, ss. 1-3; 1981, c. 377, s. 7; 1983, c. 536; 1987, (Reg. Sess., 1988), c. 1037, ss. 67, 68; 1993, c. 538, s. 18; 1994, Ex. Sess., c. 19, s. 2; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 9; c. 769, s. 21.7(a); 1998-212, s. 17.21(c); 2003-151, s. 1; 2006-247, s. 15(e); 2008-129, s. 4; 2008-187, s. 46; 2009-372, s. 11(a), (b); 2009-411, s. 1; 2009-452, ss. 3, 4; 2009-516, ss. 9, 10(a), (b); 2010-96, s. 26(c); 2010-97, s. 13; 2011-62, s. 3; 2011-145, s. 19.1(h); 2011-192, s. 4(b), (c); 2011-412, ss. 2.2, 2.3(d), 2.5; 2012-83, s. 28; 2012-188, s. 2; 2012-194, s. 7; 2013-101, s. 4; 2014-100, s. 16C.8(a); 2015-191, s. 1; 2017-186, ss. 2(ooo), 3(a).)