

§ 15A-1345. Arrest and hearing on probation violation.

(a) Arrest for Violation of Probation. – A probationer is subject to arrest for violation of conditions of probation by a law-enforcement officer or probation officer upon either an order for arrest issued by the court or upon the written request of a probation officer, accompanied by a written statement signed by the probation officer that the probationer has violated specified conditions of his probation. However, a probation revocation hearing under subsection (e) may be held without first arresting the probationer.

(a1) Suspension of Public Assistance Benefits for Probation Violators Who Avoid Arrest. – The court may order the suspension of any public assistance benefits that are being received by a probationer for whom the court has issued an order for arrest for violation of the conditions of probation but who is absconding or otherwise willfully avoiding arrest. The suspension of benefits shall continue until such time as the probationer surrenders to or is otherwise brought under the jurisdiction of the court. For purposes of this section, the term "public assistance benefits" includes unemployment benefits, Medicaid or other medical assistance benefits, Work First Family Assistance, food and nutrition benefits, any other programs of public assistance under Article 2 of Chapter 108A of the General Statutes, and any other financial assistance of any kind being paid to the probationer from State or federal funds. Nothing in this subsection shall be construed to suspend, or in any way affect the eligibility for, any public assistance benefits that are being received by or for the benefit of a family member of a probation violator.

(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534.

(b1) If the probationer is arrested for a violation of any of the conditions of probation and (i) has a pending charge for a felony offense or (ii) has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the judicial official shall determine whether the probationer poses a danger to the public prior to imposing conditions of release and must record that determination in writing.

- (1) If the judicial official determines that the probationer poses a danger to the public, the probationer shall be denied release pending a revocation hearing.
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of release shall be imposed as otherwise provided in Article 26 of this Chapter.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody for not more than seven days from the date of the arrest in order for the judicial official, or a subsequent reviewing judicial official, to obtain sufficient information to determine whether the defendant poses a danger to the public.
- (4) If the defendant has been held seven days from the date of arrest pursuant to subdivision (3) of this subsection, and the court has been unable to obtain sufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be brought before any judicial official, who shall record that fact in writing and shall impose conditions of pretrial release as otherwise provided in this section.

(c) When Preliminary Hearing on Probation Violation Required. – Unless the hearing required by subsection (e) is first held or the probationer waives the hearing, a preliminary hearing on probation violation must be held within seven working days of an arrest of a

probationer to determine whether there is probable cause to believe that he violated a condition of probation. Otherwise, the probationer must be released seven working days after his arrest to continue on probation pending a hearing, unless the probationer has been denied release pursuant to subdivision (1) of subsection (b1) of this section, in which case the probationer shall be held until the revocation hearing date.

(d) Procedure for Preliminary Hearing on Probation Violation. – The preliminary hearing on probation violation must be conducted by a judge who is sitting in the county where the probationer was arrested or where the alleged violation occurred. If no judge is sitting in the county where the hearing would otherwise be held, the hearing may be held anywhere 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. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. At the hearing the probationer may appear and speak in his own behalf, may present relevant information, and may, on request, personally question adverse informants unless the court finds good cause for not allowing confrontation. Formal rules of evidence do not apply at the hearing. If probable cause is found or if the probable cause hearing is waived, the probationer may be held for a revocation hearing, subject to release under the provisions of subsection (b). If the hearing is held and probable cause is not found, the probationer must be released to continue on probation.

(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. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing. At the hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation. The probationer is entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services. Formal rules of evidence do not apply at the hearing, but the record or recollection of evidence or testimony introduced at the preliminary hearing on probation violation are inadmissible as evidence at the revocation hearing. When the violation alleged is the nonpayment of fine or costs, the issues and procedures at the hearing include those specified in G.S. 15A-1364 for response to nonpayment of fine. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 12, 13; 1979, c. 749, s. 4; 1979, 2nd Sess., c. 1316, s. 39; 1987 (Reg. Sess., 1988), c. 1037, s. 69; 2008-117, s. 19; 2009-412, s. 2; 2011-326, s. 12(c); 2012-170, s. 1.)