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.0301 PURPOSE

This section sets out policies, rules, and standards on the various supervision conditions to which offenders are subject. All conditions are outlined within North Carolina General Statute.

.0302 REGULAR CONDITIONS OF PROBATION

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment G.S. 15A-1343(b). The regular conditions of probation are in every circumstance valid – G.S. 15A-1342(g).

G.S. 15A-1343(b) – Regular Conditions

(1) Commit no criminal offense in any jurisdiction.

Officers should consult the district attorney before alleging a probation violation based on a criminal charge that has not yet resulted in a conviction.

The bare fact that an offender has a new criminal charge pending does not constitute a violation of this condition. **The offender must have been convicted of the new offense**, *State v. Guffey, 253 N.C. 43 (1960)*, **or the court holding the violation hearing must make an independent finding that the offender violated probation by committing a new criminal act**,

State v. Monroe, 83 N.C. App. 143 (1986). Probation should not be revoked based on a criminal charge of which the probationer has been acquitted. *State v. Hardin, 183 N.C. 815 (1922)*. By statute, probation may not be revoked solely for a conviction of a Class 3 misdemeanor. G.S. 15A-1344(d)

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

The jurisdiction of the court includes the entire state of North Carolina. *Donoghue v. Department of Correction, 166 N.C. App. 612 (2004)*. Unless the court orders otherwise, officers may grant offenders permission to leave the jurisdiction as described in **Section .0617 Out of State Travel**.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of any change in address or employment.

(4) Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer.

(5) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(6) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without written permission of the court. (Offenses committed prior to December 1, 2023)

This condition does not bar the possession of firearm ammunition, absent a means to discharge it, *State v. Sherrod, 191 N.C. 776 (2008).* Possession of ammunition may be a violation of the commit no criminal offense condition for felons and certain misdemeanants, because it is a federal crime. *See* 18 U.S.C. § 922.

(7) Possess no firearm, firearm ammunition, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court. (Offenses committed on or after December 1, 2023)

(8) Pay a supervision fee as specified in subsection (c1).

(9) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(10) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(11) Pay any costs and/or fines ordered by the court, and make restitution or reparation as

provided in subsection (d).

(12) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(13) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interest of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program.

If the defendant is placed on supervised probation, the following procedures apply:

a. The probation officer shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.

b. The program shall notify the probation officer if the defendant fails to participate in the program or if the defendant is discharged from the program for violating any of the program rules.

c. If the defendant fails to participate in the program or its rules, the probation officer shall file a violation report with the court and notify the district attorney of such noncompliance.

(14) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.

(15) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.

(16) 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.

(17) 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 Department of Adult Correction for the actual costs of drug or alcohol screening and testing. (Offenses committed prior to December 1, 2023)

(18) Submit to drug and alcohol screening 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 Community Supervision of the Department of Adult Correction for the actual costs of drug or alcohol screening and testing. (Offenses committed on or after December 1, 2023)

(19) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a felony conviction. (offenses committed on or after 12/1/2016)

(20) Submit to the taking of digitized photographs, including photographs of the probationer's face, scars, marks, and tattoos, to be included in the probationer's records. (offenses committed on or after 12/1/2016)

.0303 OFFENDERS SUBJECT TO INTERMEDIATE PUNISHMENT

(a) Special Probation (split sentence). The Court may sentence an offender eligible for an intermediate punishment or an offender convicted of impaired driving (DWI) to a period of confinement followed by a term of probation. G.S. 15A-1351(a) The Court may also order special probation in response to a violation of probation. G.S. 15A-1344(e)

(1) For cases sentenced under Structured Sentencing, the period of special probation confinement may not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense.

(2) For DWI cases, the period of special probation confinement may not exceed one-fourth the statutory maximum penalty allowed by law for the offender's particular level of DWI punishment.

For example, a person convicted of a Level One DWI, which has a statutory maximum penalty of 24 months, may be required to serve up to 6 months of special probation confinement. A person convicted of a Level Three DWI, with a 6-month maximum penalty, may only be required to serve up to 1.5 months of special probation confinement.

(3) The Court may order that periods of special probation confinement be served continuously or non-continuously.

a. Continuous periods of incarceration may be served in either prison or a local jail.

DWI cases placed on probation on or after January 1, 2015, must serve the period of incarceration in a local jail.

b. Non-continuous periods of incarceration must be served in a local jail. In cases where the Court delegates to an officer the responsibility of scheduling the offender's active time, the Division takes the position that the active time should be completed as soon as possible within the parameters set out in the judgment, taking the offender's employment schedule into consideration.

In non-DWI cases, periods of imprisonment pursuant to special probation must be completed within two years of the offender's conviction. G.S. 15A-1351(a)

(4) If the person being ordered to a period or periods of imprisonment, either continuous or noncontinuous, is under the age of 18, that person must be imprisoned in a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles or to a holdover facility defined in G.S. 7B-1501(11).

(b) Local Judicially Managed Accountability and Recovery Court Program (if applicable by county). Local Judicially Managed Accountability and Recovery Court Program (JMARC) is a program requiring offenders to comply with guidelines adopted by the Administrative Office of the Courts under Article 62 of Chapter 7A of the General Statutes, available at North Carolina Recovery Court Guidelines. JMARC participants can be sentenced offenders or, under G.S. 15A-1341(a2)(a5), participants in a deferred prosecution or conditional discharge program. Officers supervising offenders ordered to JMARC will work as part of a core court team that includes a judge, a prosecutor, a defense lawyer, a TASC coordinator, and treatment representatives. The recommended JMARC supervision period is 12-24 months.

(c) Intermediate Punishment Conditions

Offenders sentenced to an intermediate punishment must abide by the following conditions unless the Court specifically exempts the defendant from one or more of them in its judgment or order. It is not necessary for the judge to state each of these conditions in open court, but the conditions must be set forth in the court's judgment or order.
G.S. 15A-1343(b4)

(1) If required in the discretion of the supervising officer, perform community service and pay the community service fee;

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

(3) Remain within the county of residence unless granted written permission to leave by the court or the supervising officer;

(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.

.0304 COMMUNITY AND INTERMEDIATE CONDITIONS

In addition to any conditions the 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:

(a) House Arrest with electronic monitoring;

(b) Perform Community Service and pay the fee;

(c) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in the subdivision may only be imposed as two-day or three-day consecutive periods. If the person being ordered to a period or periods of confinement is under the age of 18, that person must be confined in a detention facility approved by the Department of Public Safety, Division of Juvenile Justice and Delinquency Prevention to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11);

(d) Substance abuse assessment, monitoring, or treatment;

(e) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment;

(f) Participation in an educational or vocational skills development program, including an evidence-based program;

(g) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).

.0305 OTHER SPECIAL CONDITIONS OF PROBATION

In addition to the regular conditions of probation, the Court may add the special conditions as set out in G.S. 15A-1343(b1).

When the trial judge imposes one of the special conditions of probation enumerated by N.C. Gen. Stat. § 15A-1343(b1), the condition need not be reasonably related to defendant's rehabilitation because the Legislature has deemed all those special conditions appropriate to the rehabilitation of criminals and their assimilation into law-abiding society.
State v. Lambert, 146 N.C. App. 360, 367 (2001)

(a) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose. Notwithstanding the provisions of G.S. 15A-1344(e) or any other provision of law, the defendant may be required to participate in such treatment for its duration regardless of the length of the suspended sentence imposed.

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

(c) Participate in and successfully complete a Local Judicially Managed Accountability and Recovery Court Program (JMARC) pursuant to Article 62 of Chapter 7A of the General Statutes.

(d) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse

assessment.

(e) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(f) Remain at his or her residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section.

(g) Surrender his or her driver's license to the clerk of superior court and not operate a motor vehicle for a period specified by the court.

(h) Compensate the Department of Environmental Quality or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environmental Quality or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. The court may also include, as a condition of probation, compensation of an agency for any reward paid for information leading to the arrest and conviction of the offender. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(i) Perform community or reparation service under the supervision of the Division of Community Supervision of the Department of Adult Correction and pay the fee required by G.S. 143B-708.

(j) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(k) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(l) Any or all of the following conditions relating to criminal gangs as defined in G.S. 14-50.16A(1):

(1) Not knowingly associate with any known criminal gang members and not knowingly be

present at or frequent any place or location where criminal gangs gather or where criminal gang activity is known to occur.

(2) Not wear clothes, jewelry, signs, symbols, or any paraphernalia readily identifiable as associated with or used by a criminal gang.

(3) Not initiate or participate in any contact with any individual who was or may be a witness against or victim of the defendant or the defendant's criminal gang.

(m) Participate in any Project Safe Neighborhood activities as directed by the probation officer.

(n) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

.0306 SPECIAL CONDITIONS FOR SEX OFFENDERS

As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(a) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(b) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(c) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(d) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(e) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(f) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(g) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(1).

(h) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(2), and the Division of Community Supervision of the Department of Adult Correction, based on the Division's risk assessment program, recommends that the defendant submit to the highest

possible level of supervision and monitoring.

(i) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Adult Correction for the actual cost of drug screening and drug testing, if the results are positive.

.0307 PERIOD OF PROBATION

(a) Default period of probation. In Structured Sentencing cases, unless the court makes specific findings at the time of sentencing that a longer or shorter period of probation is necessary, the probation period must fall within the ranges set out below:

(1) Misdemeanants sentenced to community punishment: 6-18 months;

(2) Misdemeanants sentenced to intermediate punishment: 12-24 months;

(3) Felons sentenced to community punishment: 12-30 months;

(4) Felons sentenced to intermediate punishment: 18-36 months

If the court makes a finding that a longer period is necessary (by checking box #1 in the "Suspension of Sentence" block on the judgment form) it may order probation for up to five years in any case. G.S. 15A-1343.2 In impaired driving cases, an offender may be placed on probation for five years.

(b) Deferred Prosecution and Conditional Discharge cases. The maximum period of probation in a deferred prosecution case is two years. G.S. 15A-1342(a)

(c) Multiple terms of supervision. A period of probation commences on the day it is imposed and runs concurrently with any other period of probation, parole, or imprisonment to which the offender is subject. Period of probation may not be run consecutively or "stacked". A judge may, however, run a period of probation consecutive to an active sentence under G.S. 15A-1346, which the Division refers to as "contingent probation" cases in OPUS, or consecutive to a period of post-release supervision under G.S. 15A-1368.5, which the Division refers to as "contingent release."

Because North Carolina permits concurrent crediting of supervision time and requires it under G.S. 15A-1346(a), the Division favors an interpretation that would require periods of post-release supervision to run concurrently with any period of probation.