

## Notice, Drinking, and Intensive Probation

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Back in July the court of appeals decided [State v. Hubbard](#), a probation revocation case that I [mentioned in passing](#) but never really discussed in depth. In *Hubbard* the defendant's probation officer filed a violation report alleging that Mr. Hubbard violated probation by being "so drunk that he could hardly walk" during a curfew check. At the violation hearing the defendant raised a question about exactly which condition of probation he had violated - he was not, after all, barred from possessing or consuming alcohol. After some initial confusion, the probation officer testified that regular condition number six, "report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner," was the condition that had been violated. The trial court, however, found that Hubbard had violated probation by failing to comply with the rules of intensive supervision - a separate, special condition of probation. On appeal, the defendant argued that the court lacked subject matter to revoke his probation for violation of a condition of probation of which he had no notice.

The court of appeals disagreed and affirmed the revocation. Mr. Hubbard was correct that in general, the State must give a defendant notice before holding a probation violation hearing, including a statement of the violations alleged. G.S. 15A-1345(e). Probation may not be revoked based on conduct not alleged in the [probation violation report](#). *State v. Cunningham*, 63 N.C. App. 470 (1983) (improper to revoke probation for property damage when violation report alleged only playing loud music). Mr. Hubbard was incorrect, though, that he received insufficient notice of the alleged violation in this case. The court of appeals ruled that despite some ambiguity at the hearing about which *condition* Hubbard violated, there was no question that he had sufficient notice of the *specific behavior* that constituted a violation. The violation report said he was "drinking and raising Cain," and his probation officer testified at the violation hearing that Hubbard was "highly intoxicated" during a curfew check. This was sufficient evidence to reasonably satisfy the trial court that Hubbard had violated a condition of his probation - and it didn't matter, the court of appeals concluded, exactly which condition it was.

It appears to me that Mr. Hubbard's violation was a failure to report to his probation officer "in a reasonable manner" as required by the regular probation condition set out in G.S. 15A-1343. Being combative when your probation officer checks in is not reasonable. I disagree, however, with the idea that "part of [Hubbard's] intensive supervision is that . . . he's not at home drunk." The [rules of intensive probation](#) do not prohibit getting drunk at home. Soon, though, it will be a default condition of probation all defendants sentenced to intermediate punishment (which would include all probationers under intensive supervision) that they not use, possess, or control alcohol. [S.L. 2009-372](#).

Even if the notice provided in *Hubbard* was legally sufficient, it seems to me that the best practice for probation officers is to tie every offending behavior alleged in a violation report to a particular condition of probation - especially in the "Other" block on page 3 of the DCC-10. Doing so will help both the probationer and the probation officer prepare for the hearing.