

Probation Modifications for Good Cause

Author : Jamie Markham

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There need not be a violation for the court to modify probation.

Occasionally I hear about a situation that goes something like this. Things are going relatively well in a probation case, but the probation needs to be modified in some way. Even when everyone is on board with the modification (or perhaps even termination), I am sometimes asked whether the parties must come up with a violation to get the case before the court. The underlying concern is that the court will not have jurisdiction to act on the case without some allegation of violation.

The General Statutes do not require there to be a violation before the court is empowered to act. Under G.S. 15A-1344(d), the court has power to modify the conditions of probation or extend the probation “at any time prior to the expiration or termination of the probation . . . after notice and hearing and for good cause shown.” *Good cause* can be something short of a violation. In fact, G.S. 15A-1344(d) goes on to list the court’s options “[i]f a probationer *violates* a condition of probation.” According to that list, the court can do *more* in response to a violation than it can for mere good cause—it can, for example, impose special probation and, in response to certain violations, revoke probation—but that does not mean a violation is required before the court may extend or modify.

Form [AOC-CR-609](#), the *Order on Violation of Probation or on Motion to Modify*, expressly accounts for the possibility that the matter may be before the court for modification without allegation of violation. That is option two in the block at the top of the form:

This matter is before the Court upon:

1. review under G.S. 15A-1342(b) or (d). After reasonable notice to the defendant, the Court finds does not find that termination of probation is warranted by the defendant’s conduct and the ends of justice.
2. motion to modify the defendant’s probation without charge of violation. Upon notice and hearing consent of the State and the defendant (see signatures on Side Two if modification entered in chambers), the Court finds does not find that good cause has been shown to modify the original Judgment Suspending Sentence.
3. allegation of violation of the conditions of the defendant’s probation.

Most of the time it seems that good cause modifications are done by consent, and thus without the need for notice and hearing. If the modification order is prepared properly, with the block at the very end of the form indicating that the probationer received the form before its entry and agreed to the modification in question, that is probably all that is required to enter a modification for good cause.

(NOTE: Defendant signs the following statement in all cases of supervised probation unless probation is terminated or not modified. A witness should sign at the same time as the defendant. For in-chambers consent modifications, defendant and prosecutor must sign prior to entry of the Order.)

I have received a copy of this Order (check one) before its entry, after a hearing, and I agree to the modification(s) of my probation set out in it. I understand that no person who supervises me or for whom I work while performing community service is liable to me for any loss or damage which I may sustain unless my injury is caused by that person’s gross negligence or intentional wrongdoing. I understand that my probation may be extended pursuant to G.S. 15A-1344(d), 15A-1342(a), or 15A-1343.2(d).

Date	Signature Of Defendant	Signature Of Prosecutor	Signature Of Witness

I say “probably” because there is some argument under the line of reasoning discussed [here](#) that there is no statutory provision expressly allowing a defendant to waive his or her right to a hearing on a modification, and that modifications may therefore be done only at a courtroom hearing after giving prior written notice to the probationer. Community Corrections thought enough of that argument to end the practice of seeking extensions outside of open court. The department has not extended that policy to other modifications.

In any event, a probationer’s consent is not required before the court may modify probation for good cause. Without consent, though, there surely must be notice and a hearing before the court may act. It’s not exactly clear what that notice must entail, and there is no boilerplate form for providing it. A probation officer could presumably use something similar to the [DCC-170](#), the form used to give notice of a hearing on an extension for good cause.

As for the hearing, it’s not clear what that looks like either. It’s not a violation hearing under G.S. 15A-1345, because there is no violation alleged. I think it’s mostly an opportunity for the probationer to learn about whatever new conditions the court imposes, although the statute does expressly say that the hearing “may be held in the absence of a defendant who fails to appear for the hearing after a reasonable effort to notify the defendant.” G.S. 15A-1344(d). As for what constitutes “good cause,” what little case law we have suggests that a trial judge “is given considerable discretion in determining whether good cause exists for modifying the terms of probation.” *State v. Coltrane*, 58 N.C. App. 201 (1982), *rev’d on other grounds*, 307 N.C. 511 (1983).

I can think of at least two reasons why it is important to know that a judge has jurisdiction to act on a probation case without allegation of violation. First, any violation ginned up solely to get the case before the court could, if found by the court, still serve as an aggravating factor in a future felony sentencing under G.S. 15A-1340.16(d)(12a). Second, there’s always the possibility that the judge might not respond to a violation alleged just to get the case before the court in the way the parties had in mind.

Finally, I’ll note that there is one situation where the State must file a violation report to give the court jurisdiction to act, and that is when probation is about to expire. The grant of authority in G.S. 15A-1344(f) for the court to act after expiration (which includes the authority to modify) applies only when a *violation report* has been filed before expiration. There is no analogous provision for good cause modification after expiration based on a notice tendered before the case expired. So if you want to modify probation for mere good cause, get it done before the case ends.