

Probation Violations Arising During a Tolled Period

Author : Jamie Markham

Categories : [Procedure](#), [Sentencing](#), [Uncategorized](#)

Tagged as : [probation](#), [tolling](#)

Date : October 11, 2010

I recently presented at the North Carolina Probation and Parole Association's annual conference. I received a lot of really good questions, but the subject that raised the most questions (by far) was tolling probation under [G.S. 15A-1344\(g\)](#). I wrote about it in [this post](#) if you care to review the basics. The general concept is that a probationer's term of probation ceases to run when he or she has a new criminal charge pending that could result in revocation proceedings, and doesn't start running again until the new charge is resolved. Any pending criminal charge (including charges for traffic offenses) tolls the probation period, except a charge for a Class 3 misdemeanor which, under G.S. 15A-1344(d), may not result in revocation.

The law has a changed a little bit since I last wrote about it, adding a provision intended to mitigate the effect of tolling if a new criminal charge is resolved favorably for the probationer. Under the new law "[i]f the probationer is acquitted or if the new charge is dismissed, the time spent on probation during the tolled period shall be credited against the period of probation." The law was added by [S.L. 2009-372](#) and made effective for offenses committed on or after December 1, 2009. I interpret "offenses" in that context to mean the offense for which a person is on probation, not the new criminal charge that tolls the probationary period.

More than once, I've been asked what should happen to violations that arise during a tolled period that comes to an abrupt end on account of the credit-back provision if the charges that tolled the probation do not result in a conviction. There haven't yet been any appellate cases addressing the question, so we don't know for sure. My sense is that if the violations can be addressed at all, it would be under authority of G.S. 15A-1344(f). That provision gives the court jurisdiction to act after a period of probation expires if the State has filed a violation report before expiration. It generally kicks in when a violation hearing can't be held before expiration—either because the probationer absconded or because the violation arose near the end of the period of probation—but I think it could also be read to apply to violations that arise during a tolled period. The probationer is very much on probation even when his or her case is being tolled; the same legislation that added the credit-back provision in 2009 made clear that a "probationer shall remain subject to the conditions of probation, including supervision fees, during the tolled period." G.S. 15A-1344(g). So, if a violation report is filed before the new criminal charge that was tolling the period of probation is either dismissed or acquitted, it can be said to have been filed "[b]efore the expiration of the period of probation," thus giving the court power to act on the violation under G.S. 15A-1344(f).

I'd be interested to hear if this situation has come up in practice and, if so, how it was handled.