

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 920
Judiciary I Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 7/21/09

Short Title: Probation Reform.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW PROBATION OFFICERS TO ACCESS CERTAIN OFFENDERS' JUVENILE RECORDS, TO MAKE WARRANTLESS SEARCHES AND DRUG SCREENING REGULAR CONDITIONS OF SUPERVISION, TO ADD ADDITIONAL CONTROLLING MEASURES FOR OFFENDERS SUBJECT TO INTERMEDIATE PUNISHMENT, AND TO MAKE CLARIFYING AMENDMENTS TO STREAMLINE PROCEDURES FOR SUPERVISION OF OFFENDERS IN THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3000 reads as rewritten:

"§ 7B-3000. **Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor; ~~and~~
- (4) ~~Court eounselors;counselors; and~~
- (5) Probation officers in the Division of Community Corrections of the Department of Correction, as provided in subsection (e1) of this section and in G.S. 15A-1341(e).

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.



1 (d) Any portion of a juvenile's record consisting of an electronic or mechanical
2 recording of a hearing shall be transcribed only when notice of appeal has been timely given
3 and shall be copied electronically or mechanically, only by order of the court. After the time for
4 appeal has expired with no appeal having been filed, the court may enter a written order
5 directing the clerk to destroy the recording of the hearing.

6 (e) The juvenile's record of an adjudication of delinquency for an offense that would be
7 a felony if committed by an adult may be used by law enforcement, the magistrate, and the
8 prosecutor for pretrial release and plea negotiating decisions.

9 (e1) During any time in which a person is subject to probation supervision under Article
10 82 of Chapter 15A of the General Statutes, for an offense that was committed while the person
11 was less than 25 years of age, that person's juvenile record of an adjudication of delinquency
12 for an offense that would be a felony if committed by an adult may be examined without a
13 court order by the probation officer in the Division of Community Corrections assigned to
14 supervise the person for the purpose of assessing risk related to supervision.

15 Each judicial district manager in the Division of the Community Corrections shall designate
16 a Division staff person in each county to obtain from the clerk, at the request of the probation
17 officer assigned to supervise the person, any juvenile records authorized to be examined under
18 this subsection. The judicial district manager shall inform the clerk in each county, in writing,
19 of the designated staff person in the county. The designated staff person shall transfer any
20 juvenile records obtained to the probation officer assigned to supervise the person.

21 Any juvenile records obtained pursuant to this subsection shall continue to be withheld
22 from public inspection and shall not become part of the public record in any criminal
23 proceeding. Any copies of juvenile records shall be destroyed within 30 days of termination of
24 the person's period of probation supervision. Any other information in the Division of
25 Community Corrections records, relating to a person's juvenile record, shall remain confidential
26 and shall be maintained or destroyed pursuant to guidelines established by the Department of
27 Cultural Resources for the maintenance and destruction of Division of Community Corrections
28 records.

29 (f) The juvenile's record of an adjudication of delinquency for an offense that would be
30 a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent
31 criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an
32 aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e).
33 The record may be so used only by order of the court in the subsequent criminal proceeding,
34 upon motion of the prosecutor, after an in camera hearing to determine whether the record in
35 question is admissible.

36 (g) Except as provided in subsection (d) of this section, a juvenile's record shall be
37 destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office
38 of the Courts."

39 **SECTION 2.** G.S. 7B-3001 is amended by adding a new subsection to read:

40 "(d) When the Division of Community Corrections of the Department of Correction is
41 authorized to access a juvenile record pursuant to G.S. 7B-3000(e1), the Department may, at
42 the request of the Division of Community Corrections, notify the Division of Community
43 Corrections that there is a juvenile record of an adjudication of delinquency for an offense that
44 would be a felony if committed by an adult for a person subject to probation supervision under
45 Article 82 of Chapter 15A of the General Statutes and may notify the Division of Community
46 Corrections of the county or counties where the adjudication of delinquency occurred."

47 **SECTION 3.** G.S. 7B-3100(a) reads as rewritten:

48 "(a) The Department, after consultation with the Conference of Chief District Court
49 Judges, shall adopt rules designating certain local agencies that are authorized to share
50 information concerning juveniles in accordance with the provisions of this section. Agencies so
51 designated shall share with one another, upon request and to the extent permitted by federal law

1 and regulations, information that is in their possession that is relevant to any assessment of a
2 report of child abuse, neglect, or dependency or the provision or arrangement of protective
3 services in a child abuse, neglect, or dependency case by a local department of social services
4 pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in
5 which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined,
6 or delinquent and shall continue to do so until the protective services case is closed by the local
7 department of social services, or if a petition is filed when the juvenile is no longer subject to
8 the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to
9 share information" include local mental health facilities, local health departments, local
10 departments of social services, local law enforcement agencies, local school administrative
11 units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency
12 Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the
13 ~~Courts.~~ Courts, and, pursuant to the provisions of G.S. 7B-3000(e1), the Division of
14 Community Corrections of the Department of Correction. Any information shared among
15 agencies pursuant to this section shall remain confidential, shall be withheld from public
16 inspection, and shall be used only for the protection of the juvenile and others or to improve the
17 educational opportunities of the juvenile, and shall be released in accordance with the
18 provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g.
19 Nothing in this section or any other provision of law shall preclude any other necessary sharing
20 of information among agencies. Nothing herein shall be deemed to require the disclosure or
21 release of any information in the possession of a district attorney."

22 **SECTION 4.** G.S. 15A-1341 is amended by adding a new subsection to read:

23 "(e) Review of Defendant's Juvenile Record. – The probation officer assigned to a
24 defendant may examine the defendant's juvenile record in a manner consistent with
25 G.S. 7B-3000(e1)."

26 **SECTION 5.** G.S. 15A-1340.11 reads as rewritten:

27 **"§ 15A-1340.11. Definitions.**

28 The following definitions apply in this Article:

29 ...

- 30 (4a) House arrest with electronic monitoring. – Probation in which the offender is
31 required to remain at his or her residence unless the court or the probation
32 officer authorizes the offender to leave for the purpose of employment,
33 counseling, a course of study, or vocational training. The offender shall be
34 required to wear a device which permits the supervising agency to monitor
35 the offender's compliance with the ~~condition electronically.~~ condition.
- 36 (5) ~~Intensive probation supervision.~~ Intensive supervision. – Probation that requires the offender to
37 submit to ~~supervision by officers assigned to the Intensive Supervision~~
38 ~~Program established pursuant to G.S. 143B 262(c), and to comply with the~~
39 ~~rules adopted for that Program. Unless otherwise ordered by the court,~~
40 ~~intensive supervision also requires~~ rules adopted by the Division of
41 Community Corrections for intensive supervision, including, but not limited
42 to, multiple contacts by a probation officer per week, a specific period each
43 day during which the offender must be at his or her residence, and that the
44 offender remain gainfully and suitably employed or faithfully pursue a
45 course of study or of vocational training that will equip the offender for
46 suitable employment.
- 47 (6) Intermediate punishment. – A sentence in a criminal case that places an
48 offender on supervised probation and includes at least one of the following
49 conditions:
- 50 a. Special probation as defined in G.S. 15A-1351(a).
 - 51 b. Assignment to a residential program.

- c. House arrest with electronic monitoring.
- d. Intensive ~~probation, supervision.~~
- e. Assignment to a day-reporting center.
- f. Assignment to a drug treatment court program.

...."

SECTION 6. G.S. 143B-262(c) reads as rewritten:

"(c) ~~The Division of Community Corrections of the Department shall establish within the Division of Community Corrections a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as rules for intensive supervision consistent with the requirements specified in G.S. 15A-1340.11(5).~~"

SECTION 7. G.S. 153A-230.2(a) reads as rewritten:

"(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

- (1) Develop application and grant criteria based on the basic requirements listed in this Part,
- (2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
- (3) Review all applications,
- (4) Select grantees and award grants,
- (5) Award no more than seven hundred fifty thousand dollars (\$750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
- (6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanor population to be diverted from the State prison system,
- (7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,
- (8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,
- (9) Take into consideration the appropriateness and cost effectiveness of the proposal,
- (10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive ~~probation, supervision,~~ community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item."

SECTION 8. G.S. 164-42(a) reads as rewritten:

"(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

- (1) Imposition of an active term of imprisonment;
- (2) Imposition of a term of probation;

- 1 (3) Suspension of a sentence to imprisonment and imposition of probation with
2 conditions, including the appropriate probation option or options, including
3 house arrest, regular probation, intensive ~~probation~~, supervision, restitution,
4 and community service;
- 5 (4) Based upon the combination of offense and defendant characteristics in each
6 case, the presumptively appropriate length of a term of probation, or a term
7 of imprisonment;
- 8 (5) Ordering multiple sentences to terms of imprisonment to run concurrently or
9 consecutively;
- 10 (6) For a sentence to probation without a suspended sentence to imprisonment,
11 the maximum term of confinement to be imposed if the defendant violates
12 the conditions of probation."

13 **SECTION 9.(a)** G.S. 15A-1343(b) reads as rewritten:

14 "(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- 15 (1) Commit no criminal offense in any jurisdiction.
- 16 (2) Remain within the jurisdiction of the court unless granted written permission
17 to leave by the court or his probation officer.
- 18 (3) Report as directed by the court or his probation officer to the officer at
19 reasonable times and places and in a reasonable manner, permit the officer to
20 visit him at reasonable times, answer all reasonable inquiries by the officer
21 and obtain prior approval from the officer for, and notify the officer of, any
22 change in address or employment.
- 23 (4) Satisfy child support and other family obligations as required by the court. If
24 the court requires the payment of child support, the amount of the payments
25 shall be determined as provided in G.S. 50-13.4(c).
- 26 (5) Possess no firearm, explosive device or other deadly weapon listed in
27 G.S. 14-269 without the written permission of the court.
- 28 (6) Pay a supervision fee as specified in subsection (c1).
- 29 (7) Remain gainfully and suitably employed or faithfully pursue a course of
30 study or of vocational training that will equip him for suitable employment.
31 A defendant pursuing a course of study or of vocational training shall abide
32 by all of the rules of the institution providing the education or training, and
33 the probation officer shall forward a copy of the probation judgment to that
34 institution and request to be notified of any violations of institutional rules
35 by the defendant.
- 36 (8) Notify the probation officer if he fails to obtain or retain satisfactory
37 employment.
- 38 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
39 reparation as provided in subsection (d).
- 40 (10) Pay the State of North Carolina for the costs of appointed counsel, public
41 defender, or appellate defender to represent him in the case(s) for which he
42 was placed on probation.
- 43 (11) At a time to be designated by his probation officer, visit with his probation
44 officer a facility maintained by the Division of Prisons.
- 45 (12) Attend and complete an abuser treatment program if (i) the court finds the
46 defendant is responsible for acts of domestic violence and (ii) there is a
47 program, approved by the Domestic Violence Commission, reasonably
48 available to the defendant, unless the court finds that such would not be in
49 the best interests of justice.
- 50 (13) Submit at reasonable times to warrantless searches by a probation officer of
51 the probationer's person and of the probationer's vehicle and premises while

1 the probationer is present, for purposes directly related to the probation
2 supervision, but the probationer may not be required to submit to any other
3 search that would otherwise be unlawful. Whenever the warrantless search
4 consists of testing for the presence of illegal drugs, the probationer may also
5 be required to reimburse the Department of Correction for the actual cost of
6 drug screening and drug testing, if the results are positive.

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

12 (15) Not use, possess, or control any illegal drug or controlled substance unless it
13 has been prescribed for him or her by a licensed physician and is in the
14 original container with the prescription number affixed on it; not knowingly
15 associate with any known or previously convicted users, possessors, or
16 sellers of any such illegal drugs or controlled substances; and not knowingly
17 be present at or frequent any place where such illegal drugs or controlled
18 substances are sold, kept, or used.

19 A defendant shall not pay costs associated with a substance abuse monitoring program or
20 any other special condition of probation in lieu of, or prior to, the payments required by this
21 subsection.

22 In addition to these regular conditions of probation, a defendant required to serve an active
23 term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or
24 G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and
25 regulations of the Department of Correction governing the conduct of inmates while
26 imprisoned and report to a probation officer in the State of North Carolina within 72 hours of
27 his discharge from the active term of imprisonment.

28 Regular conditions of probation apply to each defendant placed on supervised probation
29 unless the presiding judge specifically exempts the defendant from one or more of the
30 conditions in open court and in the judgment of the court. It is not necessary for the presiding
31 judge to state each regular condition of probation in open court, but the conditions must be set
32 forth in the judgment of the court.

33 Defendants placed on unsupervised probation are subject to the provisions of this
34 subsection, except that defendants placed on unsupervised probation are not subject to the
35 regular conditions contained in subdivisions (2), (3), (6), (8), ~~and (11), (13), (14), and (15)~~
36 of this subsection."

37 **SECTION 9.(b)** G.S. 15A-1343(b1) reads as rewritten:

38 "(b1) Special Conditions. – In addition to the regular conditions of probation specified in
39 subsection (b), the court may, as a condition of probation, require that during the probation the
40 defendant comply with one or more of the following special conditions:

- 41 (1) Undergo available medical or psychiatric treatment and remain in a specified
42 institution if required for that purpose.
- 43 (2) Attend or reside in a facility providing rehabilitation, counseling, treatment,
44 social skills, or employment training, instruction, recreation, or residence for
45 persons on probation.
- 46 (2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15,
47 2002.
- 48 (2b) Participate in and successfully complete a Drug Treatment Court Program
49 pursuant to Article 62 of Chapter 7A of the General Statutes.
- 50 (3) Submit to imprisonment required for special probation under
51 G.S. 15A-1351(a) or G.S. 15A-1344(e).

- 1 (3a) Repealed by Session Laws 1997-57, s. 3.
- 2 (3b) Submit to intensive supervision ~~by officers assigned to the Intensive~~
3 ~~Supervision Program established pursuant to G.S. 143B-262(c), and abide by~~
4 ~~the rules adopted for that Program.~~ by the Division of Community
5 Corrections for that level of supervision. ~~Unless otherwise ordered by the~~
6 ~~court, intensive supervision also requires multiple contacts by a probation~~
7 ~~officer per week, a specific period each day during which the offender must~~
8 ~~be at his or her residence, and that the offender remain gainfully and suitably~~
9 ~~employed or faithfully pursue a course of study or of vocational training that~~
10 ~~will equip the offender for suitable employment.~~
- 11 (3c) Remain at his or her residence unless the court or the probation officer
12 authorizes the offender to leave for the purpose of employment, counseling,
13 a course of study, or vocational training. The offender shall be required to
14 wear a device which permits the supervising agency to monitor the
15 offender's compliance with the condition electronically and to pay a fee for
16 the device as specified in subsection (c2) of this section.
- 17 (4) Surrender his or her driver's license to the clerk of superior court, and not
18 operate a motor vehicle for a period specified by the court.
- 19 (5) Compensate the Department of Environment and Natural Resources or the
20 North Carolina Wildlife Resources Commission, as the case may be, for the
21 replacement costs of any marine and estuarine resources or any wildlife
22 resources which were taken, injured, removed, harmfully altered, damaged
23 or destroyed as a result of a criminal offense of which the defendant was
24 convicted. If any investigation is required by officers or agents of the
25 Department of Environment and Natural Resources or the Wildlife
26 Resources Commission in determining the extent of the destruction of
27 resources involved, the court may include compensation of the agency for
28 investigative costs as a condition of probation. This subdivision does not
29 apply in any case governed by G.S. 143-215.3(a)(7).
- 30 (6) Perform community or reparation service under the supervision of the
31 Division of Community Corrections and pay any the fee required by ~~law or~~
32 ~~ordered by the court for participation in the community or reparation service~~
33 ~~program.~~ G.S. 143B-262.
- 34 (7) ~~Submit at reasonable times to warrantless searches by a probation officer of~~
35 ~~his or her person and of his or her vehicle and premises while the~~
36 ~~probationer is present, for purposes specified by the court and reasonably~~
37 ~~related to his or her probation supervision, but the probationer may not be~~
38 ~~required to submit to any other search that would otherwise be unlawful.~~
39 ~~Whenever the warrantless search consists of testing for the presence of~~
40 ~~illegal drugs, the probationer may also be required to reimburse the~~
41 ~~Department of Correction for the actual cost of drug screening and drug~~
42 ~~testing, if the results are positive.~~
- 43 (8) ~~Not use, possess, or control any illegal drug or controlled substance unless it~~
44 ~~has been prescribed for him or her by a licensed physician and is in the~~
45 ~~original container with the prescription number affixed on it; not knowingly~~
46 ~~associate with any known or previously convicted users, possessors or~~
47 ~~sellers of any such illegal drugs or controlled substances; and not knowingly~~
48 ~~be present at or frequent any place where such illegal drugs or controlled~~
49 ~~substances are sold, kept, or used.~~
- 50 (8a) Purchase the least expensive annual statewide license or combination of
51 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5,

1 113-271, 113-272, and 113-272.2 that would be required to engage lawfully
 2 in the specific activity or activities in which the defendant was engaged and
 3 which constitute the basis of the offense or offenses of which he was
 4 convicted.

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

9 (9a) Repealed by Session Laws 2004-186, s. 1.1, effective December 1, 2004,
 10 and applicable to offenses committed on or after that date.

11 (10) Satisfy any other conditions determined by the court to be reasonably related
 12 to his rehabilitation."

13 **SECTION 9.(c)** G.S. 15A-1343 is amended by adding a new subsection to read:

14 "(b4) Intermediate Conditions. – The following conditions of probation apply to each
 15 defendant subject to intermediate punishment:

16 (1) If required in the discretion of the defendant's probation officer, perform
 17 community service under the supervision of the Division of Community
 18 Corrections and pay the fee required by G.S. 143B-262.

19 (2) Not use, possess, or control alcohol.

20 (3) Not use, possess, or control any illegal drug or controlled substance unless it
 21 has been prescribed for him or her by a licensed physician and is in the
 22 original container with the prescription number affixed on it; not knowingly
 23 associate with any known or previously convicted users, possessors, or
 24 sellers of any such illegal drugs or controlled substances; and not knowingly
 25 be present at or frequent any place where such illegal drugs or controlled
 26 substances are sold, kept, or used.

27 (4) Remain within the county of residence unless granted written permission to
 28 leave by the court or the defendant's probation officer.

29 (5) Participate in any evaluation, counseling, treatment, or educational program
 30 as directed by the probation officer, keeping all appointments and abiding by
 31 the rules, regulations, and direction of each program.

32 These conditions apply to each defendant subject to intermediate punishment unless the
 33 court specifically exempts the defendant from one or more of the conditions in its judgment or
 34 order. It is not necessary for the presiding judge to state each of these conditions in open court,
 35 but the conditions must be set forth in the judgment or order of the court."

36 **SECTION 10.** G.S. 15A-1342 is amended by adding a new subsection to read:

37 "(a1) Supervision of Defendants on Deferred Prosecution. – The Division of Community
 38 Corrections of the Department of Correction may be ordered by the court to supervise an
 39 offender's compliance with the terms of a deferred prosecution agreement entered into under
 40 G.S. 15A-1341(a1). Violations of the terms of the agreement shall be reported to the court as
 41 provided in this Article and to the district attorney in the district in which the agreement was
 42 entered."

43 **SECTION 11.(a)** G.S. 15A-1344(d) reads as rewritten:

44 "(d) Extension and Modification; Response to Violations. – At any time prior to the
 45 expiration or termination of the probation period or in accordance with subsection (f) of this
 46 section, the court may after notice and hearing and for good cause shown extend the period of
 47 probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions
 48 of probation. ~~The probation period shall be tolled if the probationer shall have pending against~~
 49 ~~him criminal charges in any court of competent jurisdiction, which, upon conviction, could~~
 50 ~~result in revocation proceedings against him for violation of the terms of this probation. The A~~
 51 hearing extending or modifying probation may be held in the absence of the defendant, if he

1 fails to appear for the hearing after a reasonable effort to notify him. If a ~~convicted defendant~~
2 probationer violates a condition of probation at any time prior to the expiration or termination
3 of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may
4 continue him on probation, with or without modifying the conditions, may place the defendant
5 on special probation as provided in subsection (e), or, if continuation, modification, or special
6 probation is not appropriate, may revoke the probation and activate the suspended sentence
7 imposed at the time of initial sentencing, if any, or may order that charges as to which
8 prosecution has been deferred be brought to trial; provided that probation may not be revoked
9 solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to
10 imprisonment established when the defendant was placed on probation, may reduce the
11 sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence
12 activated upon revocation of probation commences on the day probation is revoked and runs
13 concurrently with any other period of probation, parole, or imprisonment to which the
14 defendant is subject during that period unless the revoking judge specifies that it is to run
15 consecutively with the other period."

16 **SECTION 11.(b)** G.S. 15A-1344 is amended by adding a new subsection to read:

17 "(g) If there are pending criminal charges against the probationer in any court of
18 competent jurisdiction, which, upon conviction, could result in revocation proceedings against
19 the probationer for violation of the terms of this probation, the probation period shall be tolled
20 until all pending criminal charges are resolved. The probationer shall remain subject to the
21 conditions of probation, including supervision fees, during the tolled period. If the probationer
22 is acquitted or if the new charge is dismissed, the time spent on probation during the tolled
23 period shall be credited against the period of probation."

24 **SECTION 12.** G.S. 14-72.1(f) is repealed.

25 **SECTION 13.(a)** G.S. 15A-1371(h) reads as rewritten:

26 "(h) Community Service Parole. – Notwithstanding the provisions of any other
27 subsection herein, prisoners serving sentences for impaired driving shall be eligible for
28 community service parole, in the discretion of the Post-Release Supervision and Parole
29 Commission.

30 Community service parole is early parole for the purpose of participation in ~~a program of~~
31 community service under the supervision of ~~a probation/parole officer, the Division of~~
32 Community Corrections. A parolee who is paroled under this subsection must perform as a
33 condition of parole community service in an amount and over a period of time to be determined
34 by the Post-Release Supervision and Parole Commission. However, the total amount of
35 community service shall not exceed an amount equal to 32 hours for each month of active
36 service remaining in his minimum sentence. The Post-Release Supervision and Parole
37 Commission may grant early parole under this section without requiring the performance of
38 community service if it determines that such performance is inappropriate to a particular case.

39 The probation/parole officer and the ~~community service~~ judicial services coordinator shall
40 develop a program of community service for the parolee. The ~~community service~~ coordinator
41 shall report any willful failure to perform community service work to the probation/parole
42 officer. Parole may be revoked for any parolee who willfully fails to perform community
43 service work as directed by ~~a community service coordinator, the Division of Community~~
44 Corrections. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of
45 parole.

46 Community service parole eligibility shall be available to a prisoner:

- 47 (1) Who is serving an active sentence the term of which exceeds six months;
48 and
- 49 (2) Who, in the opinion of the Post-Release Supervision and Parole
50 Commission, is unlikely to engage in further criminal conduct; and
- 51 (3) Who agrees to complete service of his sentence as herein specified; and

1 (4) Who has served one-half of his minimum sentence.

2 In computing the service requirements of subdivision (4) of this subsection, credit shall be
3 given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is
4 intended to create or shall be construed to create a right or entitlement to community service
5 parole in any prisoner."

6 **SECTION 13.(b)** G.S. 15A-1371(i) reads as rewritten:

7 "(i) ~~A The fee of two hundred dollars (\$200.00) required by G.S. 143B-262.4 shall be~~
8 ~~paid by all persons who participate in the Community Service Parole Program. That fee must~~
9 ~~be paid to the clerk of court in the county in which the parolee is released. The fee must be paid~~
10 ~~in full within two weeks unless the Post Release Supervision and Parole Commission, upon a~~
11 ~~showing of hardship by the person, allows the person additional time to pay the fee. The~~
12 ~~parolee may not be required to pay the fee before the person begins the community service~~
13 ~~unless the Post Release Supervision and Parole Commission specifically orders that the person~~
14 ~~do so. Fees collected under this subsection shall be deposited in the General Fund. The fee~~
15 ~~imposed under this subsection may be paid as prescribed by the supervising parole officer."~~

16 **SECTION 14.** G.S. 20-179(n) reads as rewritten:

17 "(n) Time Limits for Performance of Community Service. – If the judgment requires the
18 defendant to perform a specified number of hours of community service ~~as provided in~~
19 ~~subsections (i), (j), or (k), the community service shall be completed:~~

- 20 (1) ~~Within 90 days, if the amount of community service required is 72 hours or~~
21 ~~more; or~~
22 (2) ~~Within 60 days, if the amount of community service required is 48 hours; or~~
23 (3) ~~Within 30 days, if the amount of community service required is 24 hours.~~

24 ~~The court may extend these time limits upon motion of the defendant if it finds that the~~
25 ~~defendant has made a good faith effort to comply with the time limits specified in this~~
26 ~~subsection. service, a minimum of 24 hours must be ordered.~~"

27 **SECTION 15.** G.S. 20-179.3 is amended by adding a new subsection to read:

28 "(j1) Effect of Violation of Community Service Requirement. – Division of Community
29 Corrections staff shall report significant violations of the terms of a probation judgment related
30 to community service to the court that ordered the community service. The court shall then
31 conduct a hearing to determine if there was a willful failure to comply. The hearing may be
32 held in the district where the requirement was imposed, where the alleged violation occurred, or
33 where the probationer resides. If the court determines that there was a willful failure to pay the
34 prescribed fee or to complete the work as ordered within the applicable time limits, the court
35 shall revoke any limited driving privilege issued in the impaired driving case until community
36 service requirements have been met. In addition, the court may take any further action
37 authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of
38 probation."

39 **SECTION 16.** G.S. 20-179.4 is repealed.

40 **SECTION 17.** G.S. 143B-262.4 reads as rewritten:

41 "~~§ 143B-262.4. Deferred prosecution, community service restitution, and volunteer~~
42 ~~program. Community service program.~~

43 (a) ~~The Department of Correction may conduct a deferred prosecution, community~~
44 ~~service restitution, and volunteer program for youthful and adult offenders. program. The~~
45 ~~program shall provide oversight of offenders placed under the supervision of the Division of~~
46 ~~Community Corrections and ordered to perform community service hours for criminal~~
47 ~~violations, including driving while impaired violations under G.S. 20-138.1. This program shall~~
48 ~~assign offenders, either on supervised or on unsupervised probation, to perform service to the~~
49 ~~local community in an effort to promote the offender's rehabilitation and to provide services~~
50 ~~that help restore or improve the community. The program shall provide appropriate work site~~
51 ~~placement for offenders ordered to perform community service hours. The Department may~~

1 adopt rules to conduct the program. Each offender shall be required to comply with the rules
2 adopted for the program.

3 (a1) The Secretary of Correction may assign one or more ~~coordinators~~ employees to each
4 district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's
5 compliance with the requirements of the program. ~~The appointment of each coordinator shall~~
6 ~~be made in consultation with the chief district court judge in the district to which the~~
7 ~~coordinator is assigned.~~ Each county shall provide office space in the courthouse or other
8 convenient place, for the use of ~~each coordinator~~ the employees assigned to that county.

9 (b) ~~Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a~~ A fee of
10 two hundred dollars (\$200.00) shall be paid by all persons who participate in the program or
11 receive services from the program staff. Only one fee may be assessed for each sentencing
12 transaction, even if the person is assigned to the program on more than one occasion, or while
13 on deferred prosecution, or while serving a sentence for the offense. A sentencing transaction
14 shall include all offenses considered and adjudicated during the same term of court. Fees
15 collected pursuant to this subsection shall be deposited in the General Fund. If the person is
16 convicted in a court in this State, the fee shall be paid to the clerk of court in the county in
17 which the person is ~~convicted.~~ convicted, regardless of whether the person is participating in
18 the program as a condition of probation imposed by the court or pursuant to the exercise of
19 authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person
20 is participating in the program as a result of a deferred prosecution or similar program, the fee
21 shall be paid to the clerk of court in the county in which the agreement is filed. If the person is
22 participating in the program as a condition of parole, the fee shall be paid to the clerk of the
23 county in which the person is released on parole. Persons participating in the program for any
24 other reason shall pay the fee to the clerk of court in the county in which the services are
25 provided by the program staff. The fee shall be paid in full ~~within two weeks from the date the~~
26 ~~person is ordered to perform the community service, and~~ before the person may participate in
27 the community service program, except that:

28 (1) A person convicted in a court in this State may be given an extension of time
29 or allowed to begin the community service before the person pays the fee by
30 the court in which the person is convicted; or

31 (2) A person performing community service pursuant to a deferred prosecution
32 or similar agreement may be given an extension of time or allowed to begin
33 community service before the fee is paid by the official or agency
34 representing the State in the agreement.

35 (3) A person performing community service as a condition of parole may be
36 given an extension of time to pay the fee by the Post-Release Supervision
37 and Parole Commission. No person shall be required to pay the fee before
38 beginning the community service unless the Commission orders the person
39 to do so in writing.

40 (4) A person performing community service as ordered by a probation officer
41 pursuant to authority delegated by G.S. 15A-1343.2 may be given an
42 extension of time to pay the fee by the probation officer exercising the
43 delegated authority.

44 ~~(e) The Secretary may designate the same person to serve as a coordinator under this~~
45 ~~section and under G.S. 20-179.4.~~

46 (d) A person is not liable for damages for any injury or loss sustained by an individual
47 performing community or reparation service under this section unless the injury is caused by
48 the person's gross negligence or intentional wrongdoing. As used in this subsection, "person"
49 includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that
50 is supervising the individual, or for whom the individual is performing community service
51 work, as well as any person employed by the agency or corporation while acting in the scope

1 and course of the person's employment. This subsection does not affect the immunity from civil
2 liability in tort available to local governmental units or agencies. Notice of the provisions of
3 this subsection shall be furnished to the individual at the time of assignment of community
4 service work by the ~~community~~ judicial service coordinator.

5 (e) ~~In order to maximize the efficiency and effectiveness of the community service~~
6 ~~program, (i) beginning September 1, 1995, community service program districts shall have the~~
7 ~~same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning~~
8 ~~with persons hired on or after September 1, 1995, all community service program district~~
9 ~~supervisors employed by the Department of Correction to supervise each of the community~~
10 ~~service program districts shall reside in the district in which the supervisor works.~~

11 (f) The community service staff shall report to the court in which the community
12 service was ordered, a significant violation of the terms of the probation, or deferred
13 prosecution, related to community ~~service.~~ service, including a willful failure to pay any
14 moneys due the State under any court order or payment schedule adopted by the Division of
15 Community Corrections. The community service staff shall give notice of the hearing to
16 determine if there is a willful failure to comply to the person who was ordered to perform the
17 community service. This notice shall be given by either personal delivery to the person to be
18 notified or by depositing the notice in the United States mail in an envelope with postage
19 prepaid, addressed to the person at the address shown on the records of the community service
20 staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of
21 the alleged willful failure to comply. The court shall then conduct a hearing, even if the person
22 ordered to perform the community service fails to appear, to determine if there is a willful
23 failure to complete the work as ordered by the community service staff within the applicable
24 time limits. The hearing may be held in the county in which the probation judgment or deferred
25 prosecution requiring the performance of community service was imposed, the county in which
26 the violation occurred, or the county of residence of the person. If the court determines there is
27 a willful failure to comply, it shall revoke any drivers license issued to the person and notify the
28 Division of Motor Vehicles to revoke any drivers license issued to the person until the
29 community service requirement has been met. In addition, if the person is present, the court
30 may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for
31 violation of a condition of probation."

32 **SECTION 18.** G.S. 143B-273.10(a) reads as rewritten:

33 "(a) A county board or a multicounty board shall consist of not less than 10 members
34 and shall, to the greatest extent possible, include the following:

- 35 (1) A county commissioner. In the case of a multicounty community corrections
36 advisory board, one county commissioner from each participating county
37 shall serve as a member.
- 38 (2) A county manager, or the county manager's designee.
- 39 (3) A judge of the superior court.
- 40 (4) A judge of the district court.
- 41 (5) A district attorney, or the district attorney's designee.
- 42 (6) A criminal defense attorney.
- 43 (7) A public defender.
- 44 (8) A county sheriff, or the sheriff's designee.
- 45 (9) A chief of a city police department, or the police chief's designee.
- 46 (10) A probation officer.
- 47 (11) ~~A community service coordinator.~~ A judicial service coordinator.
- 48 (12) One member selected from each of the following service areas which are
49 available in the county or counties: mental health, public health, substance
50 abuse, employment and training, community-based corrections programs,
51 victim services programs.

- 1 (13) A member of the business community.
2 (14) A member of the community who has been a victim of a crime.
3 (15) Members at large, including persons who are recovering from chemical
4 dependency or are previous consumers of substance abuse treatment
5 services."

6 **SECTION 19.** The provisions of this act are severable. If any provision is held
7 invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of
8 the act that can be given effect without the invalid provision.

9 **SECTION 20.** Section 1 of this act becomes effective December 1, 2009, and
10 applies to the juvenile records of adjudication of delinquency for offenders placed on probation
11 for offenses committed on or after that date; however, the juvenile records of adjudication of
12 delinquency which Section 1 authorizes the probation officer to access may include
13 adjudications of delinquency that occurred before December 1, 2009. Section 11(a) applies to
14 hearings held on or after December 1, 2009. The remainder of this act becomes effective
15 December 1, 2009, and applies to offenses committed on or after that date.