

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE DRS55274-LL-196 (03/13)

Short Title: Probation Reform.

(Public)

Sponsors: Senator Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW PROBATION OFFICERS TO ACCESS OFFENDERS' JUVENILE
3 RECORDS, TO MAKE WARRANTLESS SEARCHES AND DRUG SCREENING
4 REGULAR CONDITIONS OF SUPERVISION, TO ADD ADDITIONAL
5 CONTROLLING MEASURES FOR OFFENDERS SUBJECT TO INTERMEDIATE
6 PUNISHMENT, AND TO MAKE CLARIFYING AMENDMENTS TO STREAMLINE
7 PROCEDURES FOR SUPERVISION OF OFFENDERS IN THE COMMUNITY.

8 The General Assembly of North Carolina enacts:

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

10 "**§ 7B-3000. Juvenile court records.**

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

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

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

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

31 (c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk
32 shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED:
33 MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and
34 shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a
35 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, that person's juvenile record may be examined
11 without a court order by the probation officer in the Division of Community Corrections
12 assigned to supervise the person.

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

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

23 **SECTION 2.** G.S. 7B-3100(a) reads as rewritten:

24 "(a) The Department, after consultation with the Conference of Chief District Court
25 Judges, shall adopt rules designating certain local agencies that are authorized to share
26 information concerning juveniles in accordance with the provisions of this section. Agencies so
27 designated shall share with one another, upon request and to the extent permitted by federal law
28 and regulations, information that is in their possession that is relevant to any assessment of a
29 report of child abuse, neglect, or dependency or the provision or arrangement of protective
30 services in a child abuse, neglect, or dependency case by a local department of social services
31 pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in
32 which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined,
33 or delinquent and shall continue to do so until the protective services case is closed by the local
34 department of social services, or if a petition is filed when the juvenile is no longer subject to
35 the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to
36 share information" include local mental health facilities, local health departments, local
37 departments of social services, local law enforcement agencies, local school administrative
38 units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency
39 Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the
40 ~~Courts~~. Courts, and the Division of Community Corrections of the Department of Correction.
41 Any information shared among agencies pursuant to this section shall remain confidential, shall
42 be withheld from public inspection, and shall be used only for the protection of the juvenile and
43 others or to improve the educational opportunities of the juvenile, and shall be released in
44 accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in
45 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any
46 other necessary sharing of information among agencies. Nothing herein shall be deemed to
47 require the disclosure or release of any information in the possession of a district attorney."

48 **SECTION 3.** G.S. 15A-1341 is amended by adding a new subsection to read:

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

1 **SECTION 4.** G.S. 15A-1340.11 reads as rewritten:

2 "**§ 15A-1340.11. Definitions.**

3 The following definitions apply in this Article:

4 ...

5 (4a) House arrest with electronic monitoring. – Probation in which the offender is
6 required to remain at his or her residence unless the court or the probation
7 officer authorizes the offender to leave for the purpose of employment,
8 counseling, a course of study, or vocational training. The offender shall be
9 required to wear a device which permits the supervising agency to monitor
10 the offender's compliance with the ~~condition electronically.~~ condition.

11 (5) Intensive probation. – Probation that requires the offender to submit to
12 ~~supervision by officers assigned to the Intensive Supervision Program~~
13 ~~established pursuant to G.S. 143B-262(c), and to comply with the rules~~
14 ~~adopted for that Program. Unless otherwise ordered by the court, intensive~~
15 ~~supervision also requires~~ rules adopted by the Division of Community
16 Corrections for intensive supervision, including, but not limited to, multiple
17 contacts by a probation officer per week, a specific period each day during
18 which the offender must be at his or her residence, and that the offender
19 remain gainfully and suitably employed or faithfully pursue a course of
20 study or of vocational training that will equip the offender for suitable
21 employment.

22 "

23 **SECTION 5.** G.S. 143B-262(c) reads as rewritten:

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

34 **SECTION 6.(a)** G.S. 15A-1343(b) reads as rewritten:

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

36 (1) Commit no criminal offense in any jurisdiction.

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

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

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

47 (5) Possess no firearm, explosive device or other deadly weapon listed in
48 G.S. 14-269 without the written permission of the court.

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

50 (7) Remain gainfully and suitably employed or faithfully pursue a course of
51 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

1 by all of the rules of the institution providing the education or training, and
2 the probation officer shall forward a copy of the probation judgment to that
3 institution and request to be notified of any violations of institutional rules
4 by the defendant.

- 5 (8) Notify the probation officer if he fails to obtain or retain satisfactory
6 employment.
- 7 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
8 reparation as provided in subsection (d).
- 9 (10) Pay the State of North Carolina for the costs of appointed counsel, public
10 defender, or appellate defender to represent him in the case(s) for which he
11 was placed on probation.
- 12 (11) At a time to be designated by his probation officer, visit with his probation
13 officer a facility maintained by the Division of Prisons.
- 14 (12) Attend and complete an abuser treatment program if (i) the court finds the
15 defendant is responsible for acts of domestic violence and (ii) there is a
16 program, approved by the Domestic Violence Commission, reasonably
17 available to the defendant, unless the court finds that such would not be in
18 the best interests of justice.
- 19 (13) Submit at reasonable times to warrantless searches by a probation officer or
20 law enforcement officer of his or her person and of his or her vehicle and
21 premises while the probationer is present, for purposes specified by the court
22 and reasonably related to his or her probation supervision, but the
23 probationer may not be required to submit to any other search that would
24 otherwise be unlawful. Whenever the warrantless search consists of testing
25 for the presence of illegal drugs, the probationer may also be required to
26 reimburse the Department of Correction for the actual cost of drug screening
27 and drug testing, if the results are positive.

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

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

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

42 Defendants placed on unsupervised probation are subject to the provisions of this
43 subsection, except that defendants placed on unsupervised probation are not subject to the
44 regular conditions contained in subdivisions (2), (3), (6), (8), ~~and (11)~~, (11), and (13) of this
45 subsection."

46 **SECTION 6.(b)** G.S. 15A-1343(b1) reads as rewritten:

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

- 50 (1) Undergo available medical or psychiatric treatment and remain in a specified
51 institution if required for that purpose.

- 1 (2) Attend or reside in a facility providing rehabilitation, counseling, treatment,
2 social skills, or employment training, instruction, recreation, or residence for
3 persons on probation.
- 4 (2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15,
5 2002.
- 6 (2b) Participate in and successfully complete a Drug Treatment Court Program
7 pursuant to Article 62 of Chapter 7A of the General Statutes.
- 8 (3) Submit to imprisonment required for special probation under
9 G.S. 15A-1351(a) or G.S. 15A-1344(e).
- 10 (3a) Repealed by Session Laws 1997-57, s. 3.
- 11 (3b) Submit to intensive supervision by officers assigned to the Intensive
12 Supervision Program established pursuant to G.S. 143B-262(e), and abide by
13 the rules adopted for that Program by the Division of Community
14 Corrections for that level of supervision. Unless otherwise ordered by the
15 court, intensive supervision also requires multiple contacts by a probation
16 officer per week, a specific period each day during which the offender must
17 be at his or her residence, and that the offender remain gainfully and suitably
18 employed or faithfully pursue a course of study or of vocational training that
19 will equip the offender for suitable employment.
- 20 (3c) Remain at his or her residence unless the court or the probation officer
21 authorizes the offender to leave for the purpose of employment, counseling,
22 a course of study, or vocational training. The offender shall be required to
23 wear a device which permits the supervising agency to monitor the
24 offender's compliance with the condition electronically and to pay a fee for
25 the device as specified in subsection (c2) of this section.
- 26 (4) Surrender his or her driver's license to the clerk of superior court, and not
27 operate a motor vehicle for a period specified by the court.
- 28 (5) Compensate the Department of Environment and Natural Resources or the
29 North Carolina Wildlife Resources Commission, as the case may be, for the
30 replacement costs of any marine and estuarine resources or any wildlife
31 resources which were taken, injured, removed, harmfully altered, damaged
32 or destroyed as a result of a criminal offense of which the defendant was
33 convicted. If any investigation is required by officers or agents of the
34 Department of Environment and Natural Resources or the Wildlife
35 Resources Commission in determining the extent of the destruction of
36 resources involved, the court may include compensation of the agency for
37 investigative costs as a condition of probation. This subdivision does not
38 apply in any case governed by G.S. 143-215.3(a)(7).
- 39 (6) Perform community or reparation service under the supervision of the
40 Division of Community Corrections and pay any the fee required by law or
41 ordered by the court for participation in the community or reparation service
42 program. G.S. 143B-262.
- 43 (7) ~~Submit at reasonable times to warrantless searches by a probation officer of~~
44 ~~his or her person and of his or her vehicle and premises while the~~
45 ~~probationer is present, for purposes specified by the court and reasonably~~
46 ~~related to his or her probation supervision, but the probationer may not be~~
47 ~~required to submit to any other search that would otherwise be unlawful.~~
48 ~~Whenever the warrantless search consists of testing for the presence of~~
49 ~~illegal drugs, the probationer may also be required to reimburse the~~
50 ~~Department of Correction for the actual cost of drug screening and drug~~
51 ~~testing, if the results are positive.~~

- 1 (8) Not use, possess, or control any illegal drug or controlled substance unless it
2 has been prescribed for him or her by a licensed physician and is in the
3 original container with the prescription number affixed on it; not knowingly
4 associate with any known or previously convicted users, possessors or
5 sellers of any such illegal drugs or controlled substances; and not knowingly
6 be present at or frequent any place where such illegal drugs or controlled
7 substances are sold, kept, or used.
- 8 (8a) Purchase the least expensive annual statewide license or combination of
9 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5,
10 113-271, 113-272, and 113-272.2 that would be required to engage lawfully
11 in the specific activity or activities in which the defendant was engaged and
12 which constitute the basis of the offense or offenses of which he was
13 convicted.
- 14 (9) If the offense is one in which there is evidence of physical, mental or sexual
15 abuse of a minor, the court should encourage the minor and the minor's
16 parents or custodians to participate in rehabilitative treatment and may order
17 the defendant to pay the cost of such treatment.
- 18 (9a) Repealed by Session Laws 2004-186, s. 1.1, effective December 1, 2004,
19 and applicable to offenses committed on or after that date.
- 20 (10) Satisfy any other conditions determined by the court to be reasonably related
21 to his rehabilitation."

22 **SECTION 6.(c)** G.S. 15A-1343 is amended by adding a new subsection to read:

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

- 25 (1) If required in the discretion of the defendant's probation officer, perform
26 community service under the supervision of the Division of Community
27 Corrections and pay the fee required by G.S. 143B-262.
- 28 (2) Not use, possess, or control alcohol.
- 29 (3) Not use, possess, or control any illegal drug or controlled substance unless it
30 has been prescribed for him or her by a licensed physician and is in the
31 original container with the prescription number affixed on it; not knowingly
32 associate with any known or previously convicted users, possessors, or
33 sellers of any such illegal drugs or controlled substances; and not knowingly
34 be present at or frequent any place where such illegal drugs or controlled
35 substances are sold, kept, or used.
- 36 (4) Remain within the county of residence unless granted permission to leave by
37 the court or the defendant's probation officer.
- 38 (5) Participate in any evaluation, counseling, treatment, or educational program
39 as directed by the probation officer, keeping all appointments and abiding by
40 the rules, regulations, and direction of each program.

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

45 **SECTION 7.** G.S. 15A-1342 is amended by adding a new subsection to read:

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

1 **SECTION 8.(a)** G.S. 15A-1344(d) reads as rewritten:

2 "(d) Extension and Modification; Response to Violations. – At any time prior to the
3 expiration or termination of the probation period or in accordance with subsection (f) of this
4 section, the court may after notice and hearing and for good cause shown extend the period of
5 probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions
6 of probation. ~~The probation period shall be tolled if the probationer shall have pending against~~
7 ~~him criminal charges in any court of competent jurisdiction, which, upon conviction, could~~
8 ~~result in revocation proceedings against him for violation of the terms of this probation. The A~~
9 hearing extending or modifying probation may be held in the absence of the defendant, if he
10 fails to appear for the hearing after a reasonable effort to notify him. If a ~~convicted defendant~~
11 probationer violates a condition of probation at any time prior to the expiration or termination
12 of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may
13 continue him on probation, with or without modifying the conditions, may place the defendant
14 on special probation as provided in subsection (e), or, if continuation, modification, or special
15 probation is not appropriate, may revoke the probation and activate the suspended sentence
16 imposed at the time of initial sentencing, if any, or may order that charges as to which
17 prosecution has been deferred be brought to trial; provided that probation may not be revoked
18 solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to
19 imprisonment established when the defendant was placed on probation, may reduce the
20 sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence
21 activated upon revocation of probation commences on the day probation is revoked and runs
22 concurrently with any other period of probation, parole, or imprisonment to which the
23 defendant is subject during that period unless the revoking judge specifies that it is to run
24 consecutively with the other period."

25 **SECTION 8.(b)** G.S. 15A-1344 is amended by adding a new subsection to read:

26 "(g) The probation period shall be tolled if there are pending criminal charges against the
27 probationer in any court of competent jurisdiction, which, upon conviction, could result in
28 revocation proceedings against the probationer for violation of the terms of this probation. The
29 probationer shall remain subject to the conditions of probation, including supervision fees,
30 during the tolled period. If the probationer is acquitted or if the new charge is dismissed, the
31 time spent on probation during the tolled period shall be credited against the period of
32 probation."

33 **SECTION 9.** G.S. 14-72.1(f) is repealed.

34 **SECTION 10.(a)** G.S. 15A-1371(h) reads as rewritten:

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

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

48 The probation/parole officer and the ~~community service~~ judicial services coordinator shall
49 develop a program of community service for the parolee. The ~~community service~~ coordinator
50 shall report any willful failure to perform community service work to the probation/parole
51 officer. Parole may be revoked for any parolee who willfully fails to perform community

1 service work as directed by a ~~community service coordinator~~. the Division of Community
2 Corrections. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of
3 parole.

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

- 5 (1) Who is serving an active sentence the term of which exceeds six months;
6 and
- 7 (2) Who, in the opinion of the Post-Release Supervision and Parole
8 Commission, is unlikely to engage in further criminal conduct; and
- 9 (3) Who agrees to complete service of his sentence as herein specified; and
- 10 (4) Who has served one-half of his minimum sentence.

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

15 **SECTION 10.(b)** G.S. 15A-1371(i) reads as rewritten:

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

25 **SECTION 11.** G.S. 20-179(n) reads as rewritten:

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

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

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

36 **SECTION 12.** G.S. 20-179.3 is amended by adding a new subsection to read:

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

48 **SECTION 13.** G.S. 20-179.4 is repealed.

49 **SECTION 14.** G.S. 143B-262.4 reads as rewritten:

50 "**§ 143B-262.4. ~~Deferred prosecution, community service restitution, and volunteer~~**
51 **program. Community service program.**

1 (a) The Department of Correction may conduct a ~~deferred prosecution, community~~
2 ~~service restitution, and volunteer program for youthful and adult offenders.~~ program. The
3 program shall provide oversight of offenders placed under the supervision of the Division of
4 Community Corrections and ordered to perform community service hours for criminal
5 violations, including driving while impaired violations under G.S. 20-138.1. This program shall
6 assign offenders, either on supervised or on unsupervised probation, to perform service to the
7 local community in an effort to promote the offender's rehabilitation and to provide services
8 that help restore or improve the community. The program shall provide appropriate work site
9 placement for offenders ordered to perform community service hours. The Department may
10 adopt rules to conduct the program. Each offender shall be required to comply with the rules
11 adopted for the program.

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

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

- 37 (1) A person convicted in a court in this State may be given an extension of time
38 or allowed to begin the community service before the person pays the fee by
39 the court in which the person is convicted; or
- 40 (2) A person performing community service pursuant to a deferred prosecution
41 or similar agreement may be given an extension of time or allowed to begin
42 community service before the fee is paid by the official or agency
43 representing the State in the agreement.
- 44 (3) A person performing community service as a condition of parole may be
45 given an extension of time to pay the fee by the Post-Release Supervision
46 and Parole Commission. No person shall be required to pay the fee before
47 beginning the community service unless the Commission orders the person
48 to do so in writing.
- 49 (4) A person performing community service as ordered by a probation officer
50 pursuant to authority delegated by G.S. 15A-1343.2 may be given an

1 extension of time to pay the fee by the probation officer exercising the
2 delegated authority.

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

5 (d) A person is not liable for damages for any injury or loss sustained by an individual
6 performing community or reparation service under this section unless the injury is caused by
7 the person's gross negligence or intentional wrongdoing. As used in this subsection, "person"
8 includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that
9 is supervising the individual, or for whom the individual is performing community service
10 work, as well as any person employed by the agency or corporation while acting in the scope
11 and course of the person's employment. This subsection does not affect the immunity from civil
12 liability in tort available to local governmental units or agencies. Notice of the provisions of
13 this subsection shall be furnished to the individual at the time of assignment of community
14 service work by the ~~community~~ judicial service coordinator.

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

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

42 **SECTION 15.** G.S. 143B-273.10(a) reads as rewritten:

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

- 45 (1) A county commissioner. In the case of a multicounty community corrections
46 advisory board, one county commissioner from each participating county
47 shall serve as a member.
- 48 (2) A county manager, or the county manager's designee.
- 49 (3) A judge of the superior court.
- 50 (4) A judge of the district court.
- 51 (5) A district attorney, or the district attorney's designee.

- 1 (6) A criminal defense attorney.
2 (7) A public defender.
3 (8) A county sheriff, or the sheriff's designee.
4 (9) A chief of a city police department, or the police chief's designee.
5 (10) ~~A probation officer.~~ Two representatives from the Division of Community
6 Corrections of the Department of Correction.
7 ~~(11) A community service coordinator.~~
8 (12) One member selected from each of the following service areas which are
9 available in the county or counties: mental health, public health, substance
10 abuse, employment and training, community-based corrections programs,
11 victim services programs.
12 (13) A member of the business community.
13 (14) A member of the community who has been a victim of a crime.
14 (15) Members at large, including persons who are recovering from chemical
15 dependency or are previous consumers of substance abuse treatment
16 services."

17 **SECTION 16.** The provisions of this act are severable. If any provision is held
18 invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of
19 the act that can be given effect without the invalid provision.

20 **SECTION 17.** Section 6 of this act becomes effective December 1, 2009, and
21 applies to offenses committed on or after that date. Section 8(a) applies to hearings held after
22 this act becomes law. The remainder of this act is effective when it becomes law.