

March 25, 2009

S 920. PROBATION REFORM. Filed 3/25/09. *TO ALLOW PROBATION OFFICERS TO ACCESS 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.*

Current law provides that juvenile records may be examined only by order of the court, with a specified list of exceptions identifying persons who may examine the juvenile's record and obtain written copies of parts of the record without a court order. Amends GS 7B-3000 to add probation officers in the Division of Community Corrections of the Department of Corrections to those persons meeting the exception thereby permitting them to access juvenile records without a court order. Provides that during any time that a person is under probation supervision under GS Chapter 15A, Article 82, that person's juvenile record may be examined without a court order by the probation officer assigned to that person. Makes a conforming change to GS 15A-1341, adding a new subsection (e).

Amends GS 15A-1340.11 to modify the definition of *intensive probation* to mean probation that requires the offender to submit to rules adopted by the Division of Community Corrections for intensive supervision (was, submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to GS 143B-262(c) and to comply with rules adopted for that Program). Makes conforming change to GS 143B-262(c).

Amends GS 15A-1343(b) to require a defendant, as a regular condition of probation, to submit at reasonable times to warrantless searches by a probation officer or law enforcement officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present for purposes specified by the court and reasonably related to the probationer's probation supervision. Also provides that the probationer may not be required to submit to any other search that would be otherwise unlawful. Provides that if the warrantless search consists of testing for the presence of illegal drugs, and the test is positive, the probationer may be required to reimburse the Department of Correction for the actual cost of drug screening and testing. Makes an additional technical change. Effective December 1, 2009.

Amends GS 15A-1343(b1) providing that supervision of probationers under intensive supervision or in the performance of community or reparation service is provided by the Division of Community Corrections (Division). Makes conforming change, deleting warrantless searches from the category of special conditions of probation.

Amends GS 15A-1343 to prescribe the conditions of probation that apply to each probationer subject to intermediate punishment. Provides that the specified list of conditions applicable to intermediate punishment applies to each defendant subject to intermediate punishment unless the court specifically exempts the defendant from one or more conditions in its judgment or order.

Amends GS 15A-1344(d) to permit a hearing extending or modifying probation to be held in the absence of the defendant, if the defendant fails to appear for the hearing after a reasonable effort to notify the defendant. Applies to hearing held after this act becomes law.

Amends GS 15A-1344, adding a new subsection (g), to provide criteria for when the probation period is to be tolled.

Amends the catch line for GS 143B-262.4 to *Community service program* (was, deferred prosecution, community service restitution, and volunteer program). Permits the Department of Correction (Department) to conduct a community service program (program) that provides oversight of offenders who are placed under the supervision of the Division and ordered to perform community service hours for criminal violations. Provides operational duties of the program and allows the Department to adopt rules to conduct the program. Requires all persons who participate in or receive services from the program to pay a fee of \$200. Provides criteria for determining which county is to receive the fee and provides for an extension of time to pay the fee. Determines that a willful failure to pay any money due to the state under any court order or payment schedule adopted by the Division is a significant violation of the terms of probation and is to be reported to appropriate court. Amends GS 20-179.3 to provide that the violation of the community service requirement is to be reported to the court that ordered the community service. Provides guidelines for a hearing on the reported violation.

Repeals GS 14-72.1(f) (community service period) and amends GS 20-179(n) (regarding time limits for performance of community service) to require that if the judgment requires the defendant to perform a specified number of hours of community service, the court must order a minimum of 24 hours of service.

Amends GS 143B-273.10(a) to modify representation on County Criminal Partnership Advisory Boards to provide that the Boards include two representatives from the Division of Community Corrections of the Department of Correction (was, a probation officer and a community service coordinator).

Provides that if any of the proposed provisions are held to be invalid, the invalidity does not affect other provisions that can be given effect without the invalid provisions.

Makes additional conforming and technical changes.

Intro. by Rand.

GS 7B, 14, 15A, 20, 143B

May 12, 2009

S 920. PROBATION REFORM. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Changes references to “intensive probation” to “intensive supervision” throughout the General Statutes. Separates warrantless search provisions for probation officers and law enforcement officers into two regular conditions of probation, removing from both conditions the requirement that such searches be for reasons specified by the court. Excludes a probationer’s premises from the areas that law enforcement officers may search without a warrant. Adds that warrantless searches by law enforcement officers may only be conducted upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon without court permission. Removes from the condition allowing warrantless searches by law enforcement officers the requirement that such searches be conducted at a reasonable time. Makes additional technical changes. Makes the act effective December 1, 2008, with Section 8 applicable to offenses committed on or after that date, and Section 10(a) applicable to hearings held on or after that date.

July 21, 2009

S 920. PROBATION REFORM. Filed 3/25/09. House committee substitute makes the following changes to 2nd edition. Clarifies in proposed GS 7B-3000(e1) that, during any time in which a person is subject to probation supervision under Article 82 of GS Chapter 15A, *for an offense that was committed while the person was less than 25 years of age*, the person’s juvenile record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be examined without a court order by the probation officer in the Division of Community Corrections (Division) assigned to supervise the person *for the purpose of assessing risk related to supervision*. Requires that each judicial district manager (manager) in the Division designate a staff person in each county to obtain from the clerk, at the request of the probation officer assigned to supervise the person, any juvenile records authorized to be examined. Requires that (1) the manager inform the clerk in each county, in writing, of the designated staff person in the county and (2) the staff person transfer any juvenile records to the assigned probation officer. Specifies that these records continue to be withheld from public inspection and do not become part of the public record in any criminal proceeding. Provides that any copies of juvenile records are to be destroyed within 30 days of the termination of the person’s period of probation supervision. Provides that any other information in the Division’s records, relating to the juvenile record, are to remain confidential and be maintained or destroyed as required by Department of Cultural Resources’ guidelines. Makes a conforming change to GS 7B-3100(a).

Adds new GS 7B-3001(d) to allow, when the Division is authorized to access a juvenile record, the Department of Corrections, at the request of the Division, to notify the Division (1) that there is a juvenile record of an adjudication of delinquency for an offense that would be a felony if committed by an adult for a person subject to probation supervision and (2) of the county or counties where the adjudication of delinquency occurred.

Amends GS 15A-1343(b1) to remove that a court may require that a defendant as a *special condition* of probation, (1) not use, possess, or control any illegal drug or controlled substance

unless it has been prescribed for the defendant by a licensed physician and is in an original marked container; (2) not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; or (3) not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept or used. Instead, adds to GS 15A-1343(b) that a defendant is prohibited from those activities as a *regular condition* of probation. Also makes conforming changes.

Clarifies in proposed GS 15A-1343(b4) that a defendant, subject to intermediate punishment, as a condition of the defendant's probation, must remain within the county of residence unless granted *written* permission to leave by the court or the defendant's probation officer.

Deletes from proposed amended GS 143B-273.10(a) that a county board or a multicounty board must include, to the greatest extent possible, two representatives from the Division. Retains the requirement for a probation officer member and adds the requirement for a judicial service coordinator member.

Specifies that amendments to GS 7B-3000 apply to the juvenile records of adjudication of delinquency for offenders placed on probation for offenses committed on or after December 1, 2009. However, clarifies that juvenile records of adjudication of delinquency that may be accessed by a probation officer through the authorization in this act may include adjudications of delinquency that occurred before December 1, 2009. Also clarifies that the remainder of the act applies to offenses committed on or after December 1, 2009. Makes other conforming changes to the effective date.

Makes a technical change to the title.

July 23, 2009

S 920. PROBATION REFORM. Filed 3/25/09. House committee substitute makes the following changes to 3rd edition. Clarifies in proposed GS 7B-3000(e1) that the *copies* of juvenile records obtained under the statute must continue to be withheld from public inspection and not become part of the public record in any criminal inspection. Makes similar clarifying changes to proposed GS 15A-1341(e).

Makes a conforming change to proposed GS 15A-1343(b4) by removing the condition of probation related to use and possession or association with individuals using or possessing illegal drugs or a controlled substance for a defendant subject to intermediate punishment due to the condition's inclusion as a regular condition of probation in the previous edition of the bill.

July 28, 2009

S 920. PROBATION REFORM. Filed 3/25/09. House amendment makes the following changes to 4th edition. Makes a technical change to proposed GS 7B-3000(e1).

July 30, 2009

SL 2009-372 (S 920). PROBATION REFORM. 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. Summarized in *Daily Bulletin* 3/25/09, 5/12/09, 7/21/09, 7/23/09, and 7/28/09. Enacted July 30, 2009. Effective December 1, 2009.