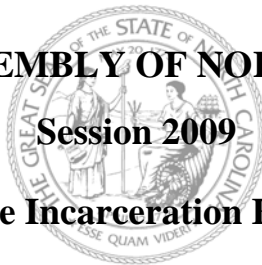


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 859 (First Edition)
SHORT TITLE: Amend Conditions of Probation.
SPONSOR(S): Representatives Faison, R. Warren, Spear, and Guice

FISCAL IMPACT table with columns for Yes, No, and No Estimate Available across fiscal years 2009-10 to 2013-14. Includes sections for EXPENDITURES, ADDITIONAL PRISON BEDS, and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

Amends the regular and special conditions for probation in GS 15A-1343(b) and (b1). Eliminates the regular condition requiring a probationer visit a prison. Changes from special conditions to regular conditions the requirements that the probationer (1) submit to warrantless searches by a probation officer and (2) not use, possess, or control any illegal drug or controlled substance (unless prescribed by a physician). Adds new regular condition requiring the probationer to supply a breath, urine, and/or blood specimen for analysis when instructed by probation officer. Effective December 1, 2009, and applies to persons sentenced to probation on or after that date

Source: Bill Digest H.B. 859 (03/26/0200).

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The North Carolina Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

### **Department of Correction – Division of Prisons**

Section 1 of this bill amends the list of regular conditions of probation in G.S. 15A-1343(b) by deleting subdivision (11) (“visit with the probation officer at a facility maintained by the Division of Prisons”) and adding subdivisions (13)-(15). The regular conditions of probation are imposed upon every probationer.

#### *G.S. 15A-1343(b)(13):*

Subdivision (13) would require a probationer to submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present.

Currently, it is a special condition of probation under G.S. 15A-1343(b1)(7) for a probationer to submit at reasonable times to warrantless searches by a probation officer, but only for purposes specified by the court and reasonably related to probation supervision. (Section 2 of the bill repeals this special condition of probation). Under current law, the judge has the discretion to impose the special conditions of probation.

The proposed amendment results in the *potential for substantial impact to the prison population and to local jail populations* by amending regular conditions of probation to include warrantless searches for all probationers. Impact would result from additional revocations of probation, and the corresponding activation of the suspended sentence, as well as from additional convictions for new crimes, that could result from the potential increase in warrantless searches.

According to the Department of Correction’s Office of Research and Planning, 69,211 (59.6%) of the 116,148 offenders on supervised probation on April 4, 2009 had warrantless search provisions as one of their conditions of probation. Under the proposed amendment, all offenders on supervised probation would be subject to warrantless searches. Since the bill applies to offenders sentenced to probation on or after December 1, 2009, there would be a gradual buildup of probationers subject to warrantless searches; therefore, the full impact of this bill would not be immediate. It is not clear whether this condition would apply to offenders sentenced to unsupervised probation (since they would not be on a probation officer’s caseload) and, if so, how authorized officials would determine that an offender was on unsupervised probation. It is not known precisely how many offenders are currently on unsupervised probation.

#### *G.S. 15A-1343(b)(14):*

Subdivision (14) would require a probationer not to (a) use, possess, or control any illegal drug or controlled substance that has not been prescribed for him or her by a licensed physician and stored in its original container, (b) knowingly associate with known or previously convicted users, possessors, or sellers of illegal drugs or controlled substances, and (c) knowingly be present at or frequent a place where illegal drugs or controlled substances are sold, kept or used. This new regular condition of probation is currently a special condition of probation under G.S. 15A-1343(b1)(8). (Section 2 of the bill repeals this special condition of probation.) Under current law, the judge has the discretion to impose the special conditions of probation.

The proposed amendment results in the *potential for substantial impact to the prison population and to local jail populations* by amending regular conditions of probation. Impact would result from additional

revocations of probation, and the corresponding activation of the suspended sentence, as well as from additional convictions for new crimes, that could result from the potential increase in the proposed substance abuse amendment.

According to the Department of Correction's Office of Research and Planning, 74,851 (64.4%) of the 116,148 offenders on supervised probation on April 4, 2009 had substance abuse provisions as one of their conditions of probation. Under the proposed amendment, all offenders on supervised probation would be subject to the substance abuse conditions. Since the bill applies to offenders sentenced to probation on or after December 1, 2009, there would be a gradual buildup of probations subject to the substance abuse conditions; therefore, the full impact of this bill would not be immediate. It is not clear whether this condition would apply to offenders sentenced to unsupervised probation (since they would not be on a probation officer's caseload) and, if so, how authorized officials would determine that an offender was on unsupervised probation. It is not known precisely how many offenders are currently on unsupervised probation.

*G.S. 15A-1343(b)(15):*

Subdivision (15) would require probationers to supply a breath, urine, and/or blood specimen for drug testing when requested by the probation officer. Currently, drug testing may be required as a special condition of probation under the warrantless search provision of G.S. 15A-1343(b1)(7), for purposes specified by the court and reasonably related to the probationers' supervision. (Section 2 of the bill repeals this special condition of probation.) Under current law, the judge has the discretion to impose the special conditions of probation.

The proposed amendment results in the *potential for substantial impact to the prison population and to local jail populations* by adding a regular condition of probation to require all probationers to submit to drug testing. Impact would result from additional revocations of probation, and the corresponding activation of the suspended sentence, as well as from additional convictions for new crimes, that could result from the potential increase in the addition of proposed required drug testing condition of probation.

According to the Department of Correction's Office of Research and Planning, 78,082 (67.2%) of the 116,148 offenders on supervised probation on April 4, 2009 had submit to drug testing provisions as one of their conditions of probation. Under the proposed amendment, all offenders on supervised probation would be subject to drug testing. Since the bill applies to offenders sentenced to probation on or after December 1, 2009, there would be a gradual buildup of probationers subject to drug testing; therefore, the full impact of this bill would not be immediate. It is not clear whether this condition would apply to offenders sentenced to unsupervised probation (since they would not be on a probation officer's caseload) and, if so, how authorized officials would determine that an offender was on unsupervised probation. It is not known precisely how many offenders are currently on unsupervised probation.

It is not known how many additional revocations of probation may occur as a result of this proposed change and how revocation rates would be affected. Under Structured Sentencing, offenders placed on probation range from those convicted of Class E felony offenses to those convicted of Class 3 misdemeanor offenses.<sup>1</sup> For any additional revocations, the length of the suspended sentence that would be activated would vary greatly depending on the offense class of the conviction for which the offender originally received a probationary sentence and the offender's prior record. Depending on the number affected, *any additional*

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<sup>1</sup> Under Structured Sentencing, Class A felony offenders may receive either a sentence of life without parole or death. With the exception of extraordinary mitigation, all offenders convicted of Class B1 through Class D felonies are required to receive an active sentence. Only offenders who receive Community punishments may be placed on unsupervised probation, which includes certain Class H and Class I felony offenders and all misdemeanor offenders. Offenders serving active sentences of 90 days or less are housed in county jails.

*revocations or increases in revocation rates could result in substantial impact to the prison and local jail populations; however, the impact cannot be determined.*

It is also not possible to determine the number of new convictions that would occur as a result of the proposed amendment. For any new convictions, the percentage of offenders receiving active sentences and the sentence imposed vary greatly depending on the seriousness of the offense (felony versus misdemeanor) and the offender’s prior record. *Increases in new convictions could result in substantial impact to the prison and local jail populations; however, the impact cannot be determined.*

For descriptive purposes, the Sentencing Commission has provided scenarios for the potential impact on the prison population based on a 1%, a 5%, and a 10% increase in probation revocation rates. These scenarios are based on total revocation rates and cannot be calculated specifically for those offenders whose probation is revoked while on one of the special conditions of probation. Table 1 does not include potential impact that would occur from any increases in new convictions as a result of the proposed changes; it also does not include potential impact on local jail populations.

**Table 1**  
**Estimated Additional Prison Beds Needed**  
**Based on Scenarios for 1%, 5%, and 10% Increases in Revocation Rates**

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	1% Increase	5% Increase	10% Increase
2009-10	122	614	1,234
2010-11	144	724	1,441
2011-12	150	764	1,525
2012-13	157	788	1,582
2013-14	165	815	1,631
2014-15	169	831	1,665
2015-16	159	842	1,692
2016-17	171	861	1,733
2017-18	173	876	1,753
2018-19	181	906	1,795

Source: NC Sentencing and Policy Advisory Commission, FY 2007-08 Felony and Misdemeanor Simulation Data

The data shown in the table above assumes effective for offenders sentenced to probation on or after December 1, 2009. Based on this effective date, FY 2010-11 would represent the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced. The scenario projections assume the same percentage of active sentences as found in FY 2007-08 and bases sentence length on the activated or suspended sentence imposed in court at the time of conviction and sentencing. This data assumes no changes in judicial or prosecutorial behavior, no deterrent or incapacitative effects, and does not take into account any potential increases in new convictions that may occur as a result of the proposed amendments. In calculating these scenario projections, proposed changes in other sections of the bill were not taken into account.

Fiscal Research believes that because judges are already ordering special conditions of probation in cases where they deem necessary, in those cases that are not given a special condition it is unlikely that the changes proposed by this bill will result in a significant number of revocations.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* Therefore, any

additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

### **Department of Correction – Division of Community Corrections**

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>2</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because the Sentencing Commission is unable to predict the offense classifications of potential probation revocations and new convictions, *the cost of intermediate and community sanctions cannot be determined.*

DCC staff reported to Fiscal Research that they do not anticipate the implementation of this bill to create a significant fiscal impact for the Division. Because this bill proposes to expand the pool of probationers that may be required to submit to a drug test, DCC may incur additional expense due to the increase in number of drug tests performed, at a cost of \$3.88 per test. DCC has no way to determine the number of additional drug tests that will be performed under this bill, and thus is not able to provide Fiscal Research with a precise cost estimate, however, *some fiscal impact is anticipated.* DCC reported that they do not anticipate any fiscal impacted related to the warrantless searches component of this bill.

### **Judicial Branch**

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

AOC staff reports that according to the Department of Correction's (DOC) Office of Research and Planning, there were 116,148 offenders on supervised probation on April 4, 2009. Data from the DOC's website reveal that approximately 70,000 offenders enter probation annually. This bill would increase the potential for revocation hearings and charges for new crimes for these probationers in several ways (note: groups are not exclusive):

1. *Expand warrantless searches to all probationers* and remove the requirement that the search be related to the conditions of supervision, thus expanding the opportunities and reasons for a search. According to DOC's Office of Research and Planning, 69,211 probationers (59.6%) are currently

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<sup>2</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

subject to warrantless searches. AOC estimates that this bill would add warrantless searches to another 28,000 supervised probationers annually.

2. *Expand the substance abuse conditions to all probationers.* According to DOC’s Office of Research and Planning, 74,851 probationers (64.4%) are currently subject to substance abuse conditions. AOC estimates that this bill would add substance abuse conditions to another 27,000 supervised probationers annually.
3. *Expand the drug testing conditions to all probationers.* According to DOC’S Office of Research and Planning, 78,082 probationers (67.2%) are currently subject to drug testing conditions. AOC estimates that this bill would add drug testing to another 26,000 supervised probationers annually.
4. *Expand the above conditions to unsupervised probation.* Using information from the Sentencing Commission’s annual report on punishments imposed, AOC estimates that there may be approximately 64,000 offenders on unsupervised probation at this time. Moving the conditions of warrantless searches, substance abuse, and drug testing from special conditions to regular conditions has the effect of imposing those conditions on offenders on unsupervised probation. The impact of this cannot be projected – it is unclear whether probation officers would be aware of unsupervised probations and choose to use these tools.

*AOC cannot predict the additional probationers who would be rearrested or subject to probation violation hearings due to the expanded conditions of probation, or the number who would be rearrested or revoked more quickly with these changes.* AOC provided some scenarios below, Table 2, to illustrate the potential magnitude of the impact. It should be noted that the December 1, 2009 effective date of the bill means that there would be a gradual buildup of new cases as more offenders enter probation under the new statutes. Therefore, AOC expects to see a smaller percentage increase in the first one or two years compared to later years.

**Table 2**  
**Estimated Rearrests and Probation Violations**  
**Based on Scenarios for 1%, 5%, and 10% Increases in Rates**

		Estimated Impact to the Court System		
		1%	5%	10%
<b>Rearrests</b> (new felony and misdemeanor cases)	1 <sup>st</sup> year	75	374	747
	2 <sup>nd</sup> year	128-193	641-966	1,281-1,932
<b>Probation Violations</b> (new violation hearings)				
	1 <sup>st</sup> year	57	282	564
	2 <sup>nd</sup> year	73	366	732

Source: Administrative Office of the Courts

The data shown in the table above assumes effective for offenders sentenced to probation on or after December 1, 2009. The Sentencing Commission reports one, two, and three-year rearrest rates of 18%, 28%, and 34% respectively (based on offenders placed on probation in FY 2003-04). Due to the fact that terms of probation vary from six months to five years, AOC has used the one- to two-year range to estimate the probationers who were arrested while still on probation. AOC data show 9,656 defendants in probation violation cases in 2008.

*The volume of new cases and violation hearings would have a significant impact on the court system, particularly for new high level felony cases.* Depending on the level of offense and the disposition of the case, per case costs range from less than \$100 to more than \$25,000. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. A typical misdemeanor case took approximately

87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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