

## SAFETY EQUIPMENT REQUIREMENTS

<u>TOOL/MACHINE</u>	<u>SAFETY ITEMS</u>
lawn mowers, push type	Eye protection is required. Orange safety vest will be worn when working along roadsides.
weedeater	Eye and ear protection is required.
backpack blower	Eye and ear protection is required.
wood router	Eye and ear protection required. (dust mask optional)
table saw	Eye and ear protection required.
sabre saw and jigsaw	Eye and ear protection required.
skill saw	Eye and ear protection required.
bench grinder	Eye and ear protection required.
power drills	Eye protection required. (never wear gloves)
chain saw	Eye protection, ear protection, chaps (certain types without hooks or clips are recommended).
tractor	Ear protection required. Hard hat shall be worn unless rock top has been installed on tractor. Safety vest not necessary if flashing lights are working properly.
axe	Hard hat and toe guards needed; chaps not necessary.
vehicle use	Seat belt always worn.
torch	Eye protection and gloves should always be worn. (leather gloves required)
welder	Eye protection always required for this machine. A long sleeved shirt or leather vest should be worn when welding vertical or overhead. (leather gloves required)
hand held grinder	Eye and ear protection required (leather gloves required)
boat use	Personal flotation device required to be worn at all times. Safety cord, if available should be plugged into ignition switch by operator.
air compressor	Safety tip should always be in place. Never use to blow off clothing or shoes.
Radial Arm Saw	Eye and ear protection required. If over two (2) inches of fence missing, the whole fence should be replaced.



on or after that date.

**Effect of Amendments.** — The 1993 amendment, effective October 1, 1994, extensively rewrote subsection (a) relating to the use of probation, and added subsection (a1). As to the applicability of the amendment, see the Editor's Note.

The 1995 amendment repeals subsec-

tion (c). For effective date and applicability of this amendment, see the editor's note.

**Legal Periodicals.** —

For note, "The Modern-Day Scarlet Letter: A Critical Analysis of Modern Probation Conditions," see 5 Duke L.J. 1257 (1989).

# CASE NOTES

**Pretrial Assignment to DAPP.** — The legislature has provided for pretrial assignment of a defendant to the Division of Adult Probation and Parole only upon deferred prosecution, and upon the agreement to assume supervision of the person. *State v. Gravette*, 327 N.C. 114, 393 S.E.2d 856 (1990).

**Court Had No Authority to Order DAPP to Supervise Defendant.** — Su-

perior court had no authority to enter order requiring Division of Adult Probation and Parole, without its consent, to provide supervision of defendant, who had been determined incompetent to stand trial but not subject to involuntary commitment, while in custody of his former wife. *State v. Gravette*, 327 N.C. 114, 393 S.E.2d 856 (1990).

## § 15A-1342. Incidents of probation.

(a) **Period.** — The court may place a convicted offender on probation for the appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five years. The court may place a defendant as to whom prosecution has been deferred on probation for a maximum of two years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

**Extension.** — The court with the consent of the defendant may extend the period of probation beyond the original period (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. The period of extension shall not exceed three years beyond the original period of probation. The special extension authorized herein may be ordered only in the last six months of the original period of probation. Any probationary judgment form provided to a defendant on supervised probation shall state that probation may be extended pursuant to this subsection.

(b) **Early Termination.** — The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of justice.

(c) **Conditions; Suspended Sentence.** — When the court places a convicted offender on probation, it must determine conditions of probation as provided in G.S. 15A-1343. In addition, it must impose a suspended sentence of imprisonment, determined as provided in Article 88, Imprisonment, which may be activated upon violation of conditions of probation.

(d) **Mandatory Review of Probation.** — Each probation officer must bring the cases of each probationer assigned to him before a court with jurisdiction to review the probation when the probationer has served three years of a probationary period greater than three years. The probation officer must give reasonable notice to the



probationer, and the probationer may appear. The court must review the case file of a probationer so brought before it and determine whether to terminate his probation.

(e) Out-of-State Supervision. — Supervised probationers are subject to out-of-State supervision under the provisions of G.S. 148-65.1.

(f) Appeal from Judgment of Probation. — A defendant may seek post-trial relief from a judgment which includes probation notwithstanding the authority of the court to modify or revoke the probation.

(g) Invalid Conditions; Timing of Objection. — The regular conditions of probation imposed pursuant to G.S. 15A-1343(b) are in every circumstance valid conditions of probation. A court may not revoke probation for violation of an invalid condition imposed pursuant to G.S. 15A-1343(b). The failure of a defendant to object to a condition of probation imposed pursuant to G.S. 15A-1343(b) at the time such a condition is imposed does not constitute a waiver of the right to object at a later time to the condition.

(h) Limitation on Jurisdiction to Alter or Revoke Unsupervised Probation. — In the judgment placing a person on unsupervised probation, the judge may limit jurisdiction to alter or revoke the sentence under G.S. 15A-1344. When jurisdiction to alter or revoke is limited, the effect is as provided in G.S. 15A-1344(b).

(i) Immunity from Prosecution upon Compliance. — Upon the expiration or early termination as provided in subsection (b) of a period of probation imposed after deferral of prosecution and before conviction, the defendant shall be immune from prosecution of the charges deferred.

(j) Immunity for Injury to Defendant Performing Community Service. — Immunity from liability for injury to a defendant performing community service shall be as set forth in G.S. 143B-475.1(d). (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 6, 7; 1981, c. 377, ss. 4-6; 1983, c. 435, s. 3.1; c. 561, s. 7; 1985 (Reg. Sess., 1986), c. 960, s. 1; 1993, c. 84, s. 1; 1993 (Reg. Sess., 1994), c. 767, s. 6; 1995, c. 330, s. 1.)

#### Editor's Note. —

Session Laws 1993, c. 84, which amends subsection (a), provides in section 3 that the act is effective March 1, 1994, and applies to persons placed on probation or after that date.

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

#### Effect of Amendments. — The 1993

amendment, effective March 1, 1994, and applicable to persons placed on probation on or after that date, added the last sentence of the second paragraph of subsection (a).

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in subsection (a) inserted "the appropriate period as specified in G.S. 15A-1343.2(d), not to exceed" in the first paragraph, and in the second paragraph added "Extension," substituted "the original period" for "five years" in the first sentence, and substituted "original period of probation" for "probation term" in the third sentence.

The 1995 amendment, effective June 26, 1995, rewrote subsection (j).



## ARTICLE 11.

*Department of Crime Control and Public Safety.*

## Part 1. General Provisions.

## § 143B-474. Department of Crime Control and Public Safety — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.1, provides that of the funds appropriated to the Department of Crime Control and Public Safety for the 1994-95 fiscal year, two hundred thirty thousand seven hundred ninety dollars (\$230,790) shall be allocated to implement a pilot program to provide assistance to communities in the development of community policing programs in high crime areas. The Secretary shall report to the General Assembly on this program by March 1, 1995.

Session Laws 1993 (Reg. Sess., 1994),

c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994'."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for the activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

## § 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars (\$100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee must be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee must be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason must pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee must be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service



before he pays the fee by the court in which he is convicted;  
or

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

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary is authorized to designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

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

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451; 1985 (Reg. Sess., 1986), c. 1012, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 113; 1989, c. 752, s. 119; 1995, c. 330, s. 2; c. 507, s. 20(a).)

**Editor's Note.** — Session Laws 1994, Extra Session, c. 24, s. 38 provides for the Administrative Office of the Courts, in consultation with the North Carolina Conference of District Attorneys, to study the problem of underutilization of the deferred prosecution program established in this section and recommend methods for encouraging greater use of the program across the State, and to report to the 1995 General Assembly.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to

funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 23.12 is a severability clause.

**Effect of Amendments.** — Session Laws 1995, c. 330, s. 2, effective June 26, 1995, added subsection (d).

Session Laws 1995, c. 507, s. 20(a), effective July 15, 1995, added subsection (e).



COMMUNITY SERVICE WORK PROGRAM  
REQUIREMENTS AND REGULATIONS

Client's Name \_\_\_\_\_ Docket No. \_\_\_\_\_

Court Date: \_\_\_\_\_ No. of Hours: \_\_\_\_\_ to be completed by: \_\_\_\_\_

NOTICE: A person participating in community service may not be able to recover damages for injury or loss sustained as a result of community service. G.S. 15A-1342(j).

Client ☐ has no personal health insurance.  
☐ has personal health insurance with \_\_\_\_\_  
☐ chooses not to provide information regarding his/her personal health insurance.

I. REQUIREMENTS FOR SUCCESSFUL COMPLETION OF COMMUNITY SERVICE WORK PROGRAM.

All clients will be required to:

1. Satisfactorily complete the required number of hours ordered by the court.
2. Be interviewed by the CS Staff in order to be placed with a recipient agency.  
It is the client's responsibility to schedule this interview within \_\_\_\_\_ days.  
Location of Community Service Work Program: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

3. Complete all written forms required by the Court and the CS Staff.
4. Pay the administrative fee of \$100, and present a copy of the receipt to the CS Staff. This fee will be paid to the Clerk of Court. No other community service fee is required.
5. Maintain monthly contact with the CS Staff.

II. COMMUNITY SERVICE WORK REGULATIONS:

1. Every reasonable effort will be made by the CS Staff to accommodate each client's personal schedule for both interview appointments and work hours.
2. THE COMMUNITY SERVICE WORK PROGRAM WILL NOT PERMIT A CLIENT TO BE TARDY OR ABSENT FOR AN INTERVIEW OR SCHEDULED COMMUNITY SERVICE WORK ASSIGNMENT. THE ONLY EXCEPTIONS TO THIS RULE ARE:  
A. Illness (Doctor's excuse may be required). B. Death of an immediate relative.
3. No client will be permitted to report for work placement or interview who has the odor of alcohol on his/her breath, alcohol in the body which has been previously consumed, or any drugs in the body except for those lawfully obtained and taken in appropriate amounts.
4. All clients will be required to:  
A. Report to and check out with the on-site supervisor as schedule.  
B. Follow all instructions given by the supervisor.  
C. Wear clothing appropriate to the setting or agency in which they are placed. Shoes must be worn at all times, no open shoes for outdoor work, no sandals at any time. For outdoor work, clothing for protection from the sun, sunscreen, sunglasses, and gloves are also recommended. Supervisors have the right to determine whether or not clothing or attire is appropriate to the setting.  
D. Depending on the work schedule, meals and non-alcoholic beverages may be brought.  
E. Have no visitors or phone calls at the work site.  
F. Demonstrate a good attitude and willingness to perform assigned duties in a professional manner.  
G. Abide by all rules and regulations of the agency.
5. If a client is returned to court/Parole Commission for non-compliance of these requirements or violation of the Court/Agreement, he/she may not be eligible for re-enrollment in the Community Service Work Program. NO REFUND OF COMMUNITY SERVICE WORK FEES WILL BE MADE.

By my signature, I acknowledge that I have received, read or have had read to me, and fully understand the contents of this document. I agree to comply with the requirements and regulations stated herein. I further understand that a violation of any of the above requirements and regulations may result in an active prison term and, if I have been convicted of DWI, a loss of my limited driving privilege.

Client's Signature \_\_\_\_\_ Date \_\_\_\_\_ CS Staff's Signature \_\_\_\_\_ Date \_\_\_\_\_

Parent-Guardian-Witness \_\_\_\_\_ Date \_\_\_\_\_  
Signature