

DIVISION OF PARKS AND RECREATION

June 10, 1996

**MEMORANDUM**

TO: Superintendent of State Parks  
District Superintendents  
Park Superintendents  
Parks Chief Ranger  
Park Safety Officers

FROM: Susan Tillotson, NODI Superintendent, SOHC Chairperson

SUBJECT: Staff Directive 96-3 Reference Information

The attached N.C. General Statutes 15A-1342 (j) and 14B-475.1 (d) are referenced in the revised Community Service Worker Program Power/Tool Equipment Safety Regulations procedures form recently implemented by Staff Directive 96-3. These General statutes should be made readily available to CSW's who may question the specific content of these laws.

Attached also are copies of the CSW Program Requirements and Regulations form and the CSW Program Recipient Agency Agreement form. As is specified in the recently revised section 7.0 of the division Employee and Workplace Safety Guidelines, all staff responsible for supervising CSW's should read and become familiar with the conditions set forth in these forms.

Please contact me if you have questions regarding this reference information.

ST/lf

Attachments

**§ 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 83, 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(b1). The failure of a defendant to object to a condition of probation imposed pursuant to G.S. 15A-1343(b1) 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. 5.1; 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.)

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

It shall be the duty of the Department of Crime Control and Public Safety to provide assigned law-enforcement and emergency services to protect the public against crime and against natural and man-made disasters; to plan and direct a coordinated effort by the law-enforcement agencies of State government and to insure maximum cooperation between State and local law-enforcement agencies in the fight against crime; to prepare annually a State plan for the State's criminal justice system; to serve as the State's chief coordinating agency to control crime, to insure the safety of the public and to insure an effective and efficient State criminal justice system; to have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct; to regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State; to provide national guard troops trained by the State to federal standards; to insure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life, and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes; and to develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems.

(1977, c. 70, s. 1.)

§ 143B-475.1: Recodified as § 143B-262.4 by Session Laws  
2001-487, s. 91(a).

**§ 143B-262.4. Deferred prosecution, community service  
restitution, and volunteer program.**

(a) The Department of Correction may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Correction 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 the chief district court judge in the district to which the coordinator is assigned. Each county shall 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 two hundred dollars (\$200.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall 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 shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before the person may participate in the community service program, 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 the person pays the fee by the court in which the person 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 community service before the fee is paid by the official or agency representing the State in the agreement.

(c) The Secretary may 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 shall 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 Correction to supervise each of the community service program districts shall reside in the district in which the supervisor works.

(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers [driver's] license issued to the person and notify the Division of Motor Vehicles to revoke any drivers [driver's] license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation. (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. 118; 1989, c. 752, s. 109; 1995, c. 330, s. 2; c. 507, s. 20(a); 1997-234, s. 2; 1998-217, s. 34; 2001-487, ss. 91(a), (b); 2002-126, s. 29A.1(c).)



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 in 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 Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



COMMUNITY SERVICE WORK PROGRAM  
Recipient Agency Agreement

\_\_\_\_\_; hereinafter referred to as recipient agency, and the Community Service Work Program mutually agree to the following conditions.

**The recipient agency agrees to:**

1. Provide safe work for clients and any tools and materials necessary for the job assignment.
2. Provide supervision of work participants insuring that the client is productive and working safely throughout the work assignment.
3. Treat clients with dignity and respect.
4. Insure that proper medical treatment is administered when required and notify the CS staff immediately.
5. Notify CS staff immediately if client fails to show or is continually tardy or is performing community service in an unsatisfactory manner.
6. Ask client to leave and notify CS staff immediately if client consumes alcohol or a controlled substance while doing community service or reports to perform community service under the influence of alcohol or a controlled substance or has the odor of alcohol on his person.
7. Return the completed placement/verification form within five (5) days of the completion of the required hours to CS staff verifying that client has completed the required hours and that the information reported is true and accurate.
8. Accept no gratuities (gifts, money, agency donations, etc.) in exchange for crediting hours not actually worked or for falsifying records. This is in direct violation of the North Carolina General Statutes and may be punishable by imprisonment, a fine or both.
9. Make all staff who are responsible for supervising CS clients aware of the conditions of this agreement and the conditions of the CS Requirements and Regulations.\*\*
10. Notify CS staff immediately if client or agency personnel violate any of the conditions of this agreement or the conditions as set out in the CS Requirements and Regulations.

**The Community Service Work Program agrees to:**

1. Provide clients, as available, to recipient agency with an explanation of client's offense.
2. Inform recipient agency if client has any disabilities.
3. Notify recipient agency of changes relative to client's reporting to that agency.
4. Promptly and effectively work with the recipient agency to resolve any problems that may arise as a result of the work placement.
5. Provide medical insurance for accidental injury to the client.

The undersigned have affixed their signatures this \_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_. It is further stated that  
The undersigned is an authorized representative of the agency concerned and authorized to enter into this agreement.

\_\_\_\_\_  
Agency Representative

\_\_\_\_\_  
CS Staff

This contract will be null and void by mutual consent of the authorized representative of the recipient agency and the community service staff.

\* One signed copy should be maintained by each party.

\*\* A copy of the Community Service Work Program Requirements and Regulations is attached hereto and incorporated by reference as fully set out herein.

