

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 513 (Fourth Edition as amended on House Floor 6/29/09)

SHORT TITLE: Notice of Hearing/Unsupervised Probation.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes (X) No () No Estimate Available (X)

FY 2009-10 FY 2010-11 FY 2011-12 FY 2012-13 FY 2013-14

REVENUES: Some savings anticipated; amount cannot be determined

EXPENDITURES: Some costs anticipated; amount cannot be determined

POSITIONS
(cumulative): - - - - -

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch

EFFECTIVE DATE: September 1, 2009

BILL SUMMARY:

This bill seeks to amend G.S. 15A-1344 to allow that notice of a hearing in response to a violation of unsupervised probation shall be given either by 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 last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender. Under current law, there is no explicit permission for preparers other than community service work program coordinators to send notice of a hearing in response to a violation of unsupervised probation via U.S. mail rather than by personal delivery. This bill would give all preparers of these notices, i.e. clerks of court, explicit permission to mail notices to the offender's last known address. Effective date is September 1, 2009

ASSUMPTIONS AND METHODOLOGY:

Administrative Office of the Courts

The NC Administrative Office of the Courts (AOC) *cannot determine the number of unsupervised probationers who violate the terms of their probation or the number of notices of violation hearings issued.*

The NC Sentencing and Policy Advisory Commission reports that in FY 2007-08 there were 53,493 convictions for which the sentence imposed was unsupervised probation, so *the number could be substantial*.

Currently, clerks may issue either show cause orders or notices of hearings for probation violations. These orders and notices are given to the sheriffs' offices for personal delivery. (It is possible that some notices are mailed if the offender has been required to perform community service as part of the sentence.) The most common reason for a clerk to issue a show cause order or notice of hearing in these cases is for non-payment of monies owed.

This bill would have several effects, listed below:

Potential Effects of Proposed SB 513		
	Savings	Costs
Issue notice via mail	Reduce work for sheriffs who serve notices	Postage and mailing supplies for AOC
Violation hearings	Increased court efficiency in scheduling and holding violation hearings	Increase in number of hearings, which require court personnel and other resources
Revocations	Potential to recoup more fines, costs, attorney fees and restitution (if any) due to ability to docket civil judgments upon probation termination after a hearing in some cases	Increase workload for sheriffs to serve orders for arrest for probationers who do not appear for hearing

The issuance of notices via U.S. mail would reduce workload for sheriffs' officers who currently serve the notices and show cause orders. (Show cause orders must be delivered personally, but under this bill, court officials might choose to issue more notices of violation instead of show cause orders.) *The court system would bear the cost of mailing the notices.*

G.S. 15A-1345 requires that a probationer be given notice at least 24 hours prior to a violation hearing. When a notice of a hearing is issued, the clerk includes in the notice the date of the hearing. Currently, clerks have to reissue notices and reschedule hearings if the sheriff locates an offender after the originally-scheduled date of the hearing. Under this bill, the clerk would be able to schedule hearings based on the date the notice is mailed (by calculating required notice plus three mailing days), and would not need to reschedule hearings.

Therefore, the result of mailed notices would be increased efficiency in scheduling hearings and an increase in violation hearings. While the efficiency would result in some time savings, particularly for clerks, the increase in hearings would require more time for judges, clerks and other court personnel.

For those offenders who receive the mailed notices and appear for the violation hearing, the court may improve collections of monies owed. To the extent that these offenders previously would not have been found and personally served by the sheriffs, the collection of this money represents new revenue for the General Fund and local governments. To the extent that these offenders would also have responded to a personally-served notice, the collection of this money would not be new revenue, and would have been collected at less expense to sheriffs but at greater expense to the court system.

Under current law and this bill, if an offender does not appear for a hearing after a reasonable effort to notify him, certain hearings can be held in his absence (G.S. 15A-1344(d)). Upon appropriate funding of the court or upon termination or modification of the probation, civil judgments can be docketed for fines,

costs, attorneys' fees and, in some cases, restitution owed. This allows the court to use additional measures such as liens on real property and set-off debt intercepts of tax refunds to recoup money owed. Therefore, it is possible that the increased hearings held without the offender present could lead to increased collections of certain monies owed.

If the State chooses to pursue revocation of probation and activation of a suspended sentence, the defendant's presence would be required, in which case the defendant's failure to appear would necessitate the issue of a criminal process (e.g., an order for arrest). In such cases, the savings to sheriffs on the front end for service of notices will be to some extent offset by the costs to sheriffs for post-hearing arrests, and any docketing of monies owed as civil judgments would be delayed until the actual disposition at hearing.

SOURCES OF DATA: NC Administrative Office of the Courts, NC Sentencing and Policy Advisory Commission annual statistical report (January 2009)

TECHNICAL CONSIDERATIONS:

- The effective date of this bill is September 1, 2009. This bill would require change to the AOC forms, which are updated annually on December 1, 2009.
- As described above, notice of a probation violation hearing must be given at least 24 hours prior to the hearing (G.S. 15A-1345). The proposed G.S. 15A-1344(b1) would allow such notice to be given by mail. A similar provision in G.S. 143B-262.4 permits community service staff to give notice of violation and hearing by mail, but such notice must be given 10 days prior to the hearing. Proposed SB 513 therefore creates two different notice deadlines for hearings on violation of unsupervised probation based on what conditions of probation has been violated and who gives the notice.

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Signed Copy Located in the NCGA Principal Clerk's Offices