

## ARREST, SEARCH, AND INVESTIGATION FOR SUPERIOR COURT JUDGES

### Probation Searches

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#### A. Constitutional background

##### 1. Searches of supervised offenders by probation officers

- a. In light of the “special needs” of probation, a probation officer may search a probationer’s home without a warrant when he or she has reasonable grounds to believe an offender possesses contraband, when a state administrative regulation allows such searches. *Griffin v. Wisconsin*, 483 U.S. 868 (1987).
- b. Suspicionless warrantless searches of probationers who are subject to a warrantless search condition may be acceptable as part of a program that is, considered as a whole, reasonably tailored. *United States v. Midgette*, 478 F.3d 616 (4th Cir. 2007).

##### 2. Searches of supervised offenders by law enforcement officers

- c. A law enforcement officer may, when investigating a new criminal offense, search the home of a probationer who is subject to a warrantless search condition when the officer has reasonable suspicion of criminal activity. *United States v. Knights*, 534 U.S. 112 (2001).
- d. A law enforcement officer may search a parolee without any suspicion of criminal activity when the parolee is subject to a condition that allows him or her to be searched “by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.” *Samson v. California*, 547 U.S. 843 (2006).

#### B. North Carolina’s statutory framework

##### 1. Probationers

- a. **Warrantless searches by probation officers (regular condition of probation since 2009).**  
“Submit at reasonable times to warrantless searches by a probation officer of the probationer’s person and of the probationer’s vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.” G.S. 15A-1343(b)(13).

- b. **Warrantless searches by law enforcement officers (regular condition of probation since 2009).** “Submit to warrantless searches by a law enforcement officer of the probationer’s person and of the probationer’s vehicle, 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 listed in G.S. 14-269 without written permission of the court.” G.S. 15A-1343(b)(14).
- c. **Drug testing as a search.** “Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant’s probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual costs of drug or alcohol screening and testing.” G.S. 15A-1343(b)(16).
- d. **Sex offenders.** “Submit at reasonable times to warrantless searches by a probation 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 probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer’s computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug screening and drug testing, if the results are positive.” G.S. 15A-1343(b2)(9).

## 2. Other supervisees

- a. **Post-release supervisees.** “Submit at reasonable times to searches of the supervisee’s person by a post-release supervision officer for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive.” G.S. 15A-1368.4(e)(10).
- b. **Parolees.** “Submit at reasonable times to warrantless searches by a parole officer of the parolee’s person and of the parolee’s vehicle and premises while the parolee is present, for purposes reasonably related to the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. If the parolee has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, warrantless searches of the parolee’s computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision.

Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive.” G.S. 15A-1374(b)(11).

#### **C. Law enforcement participation in probation officer searches**

1. **Probation officers may seek the assistance of law enforcement.** By policy, probation officers are instructed to seek the assistance of law enforcement officers to conduct a search when they feel their safety is in jeopardy. This practice is universally upheld.
2. **The police may not use a probation officer as a “stalking horse” to circumvent the warrant requirement.** However, the police may ask probation officers to assist with a search of a suspect they know to be under formal supervision. The test is whether the probation officer ultimately exercised his or her own independent judgment in deciding to perform the search. *State v. Robinson*, 148 N.C. App. 422 (2002); *State v. Church*, 110 N.C. App. 569 (1993); *State v. Howell*, 51 N.C. App. 507 (1981).

#### **D. The exclusionary rule and probation hearings**

1. **The exclusionary rule does not apply at probation revocation hearings in North Carolina.** *State v. Lombardo*, 306 N.C. 594 (1982). In *Lombardo* the Supreme Court of North Carolina ruled that improperly obtained evidence that had been excluded from a criminal trial in Florida could nonetheless be admitted at a probation violation hearing in North Carolina. The court reasoned that excluding evidence from probation hearings would damage the viability of the probation system “by allowing those like *Lombardo*, who show a total disregard for the system, to exclude evidence of their personal probation violations.” The court also pointed out that excluding the evidence would not further the interest of deterring police misconduct when the Florida law enforcement officers who improperly seized the defendant were unaware of his supervision status. In a subsequent appeal by the same defendant, the court of appeals ruled that the latter rationale was not essential to the supreme court’s holding. *State v. Lombardo*, 74 N.C. App. 460, 463 (1985) (“[T]he Court did not expressly qualify its holding to exclude the [exclusionary] rule’s application to such proceedings upon the law enforcement official being unaware of the probationer’s status.” *See also* *United States v. Armstrong*, 187 F.3d 392 (4th Cir. 1999) (refusing to apply the exclusionary rule in a federal supervised release hearing, citing *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357 (1998)).