

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 926
PROPOSED COMMITTEE SUBSTITUTE H926-PCS50603-RK-23

Short Title: Continuous Alcohol Monitoring Systems.

(Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS AS A CONDITION OF PROBATION, TO MEET REQUIREMENTS FOR THE RESTORATION OF A REVOKED DRIVERS LICENSE, TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES, AND TO ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(2c) Either singly or in combination, (i) abstain from alcohol consumption, verified by continuous alcohol monitoring, or (ii) submit to recommended treatment when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

a. If the court finds, upon good cause shown, that a defendant should not be required to pay the costs of a continuous alcohol monitoring system, it shall not impose that the defendant abstain from alcohol consumption as a condition of probation, unless a State agency or a local governmental entity agrees to pay the fees or costs of the system.

b. Notwithstanding any other provision of law, fees or costs of a continuous alcohol monitoring system paid by a State agency or a local unit of government shall be paid directly to the entity providing the continuous alcohol monitoring system. Any fees or costs paid for monitoring by the defendant shall be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed, and shall be transmitted to the entity providing the continuous alcohol monitoring system.

c. The entity providing the continuous alcohol monitoring system shall maintain records of all payments, which shall be made available to the clerk of court upon request."

SECTION 2. G.S. 15A-1340.11 reads as rewritten:



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1 "....

2 (6) Intermediate punishment. – A sentence in a criminal case that places an
3 offender on supervised probation and includes at least one of the following
4 conditions:

- 5 a. Special probation as defined in G.S. 15A-1351(a).
6 b. Assignment to a residential program.
7 c. House arrest with electronic monitoring.
8 d. Intensive probation.
9 e. Assignment to a day-reporting center.
10 f. Assignment to a drug treatment court program.

11 (6a) In addition to any one or more of the conditions for an offender on
12 supervised probation, as set forth in subdivision (6) of this section, a
13 sentence may also include as a condition of the supervised probation, either
14 singly or in combination, that the defendant (i) abstain from alcohol
15 consumption, to be verified by continuous alcohol monitoring, or (ii) submit
16 to recommended treatment when alcohol dependency or chronic abuse has
17 been identified by a substance abuse assessment. Imposition of continuous
18 alcohol monitoring shall be pursuant to the requirements of
19 G.S. 15A-1343(b1)(2c).

20 "...."

21 **SECTION 3.** G.S. 15A-1343(b) reads as rewritten:

22 **"§ 15A-1343. Conditions of probation.**

23 (a) In General. – The court may impose conditions of probation reasonably necessary to
24 insure that the defendant will lead a law-abiding life or to assist him to do so.

25 (b) Regular Conditions. – As regular conditions of probation, a defendant must:

- 26 (1) Commit no criminal offense in any jurisdiction.
27 (2) Remain within the jurisdiction of the court unless granted written permission
28 to leave by the court or his probation officer.
29 (3) Report as directed by the court or his probation officer to the officer at
30 reasonable times and places and in a reasonable manner, permit the officer to
31 visit him at reasonable times, answer all reasonable inquiries by the officer
32 and obtain prior approval from the officer for, and notify the officer of, any
33 change in address or employment.
34 (4) Satisfy child support and other family obligations as required by the court. If
35 the court requires the payment of child support, the amount of the payments
36 shall be determined as provided in G.S. 50-13.4(c).
37 (5) Possess no firearm, explosive device or other deadly weapon listed in
38 G.S. 14-269 without the written permission of the court.
39 (6) Pay a supervision fee as specified in subsection (c1).
40 (7) Remain gainfully and suitably employed or faithfully pursue a course of
41 study or of vocational training that will equip him for suitable employment.
42 A defendant pursuing a course of study or of vocational training shall abide
43 by all of the rules of the institution providing the education or training, and
44 the probation officer shall forward a copy of the probation judgment to that
45 institution and request to be notified of any violations of institutional rules
46 by the defendant.
47 (8) Notify the probation officer if he fails to obtain or retain satisfactory
48 employment.
49 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
50 reparation as provided in subsection (d).

- 1 (10) Pay the State of North Carolina for the costs of appointed counsel, public
2 defender, or appellate defender to represent him in the case(s) for which he
3 was placed on probation.
- 4 (11) At a time to be designated by his probation officer, visit with his probation
5 officer a facility maintained by the Division of Prisons.
- 6 (12) Attend and complete an abuser treatment program if (i) the court finds the
7 defendant is responsible for acts of domestic violence and (ii) there is a
8 program, approved by the Domestic Violence Commission, reasonably
9 available to the defendant, unless the court finds that such would not be in
10 the best interests of justice.

11 A defendant shall not pay costs associated with a substance abuse monitoring program or
12 any other special condition of probation in lieu of, or prior to, the payments required by this
13 ~~subsection-subsection~~, except that payment of fees or costs for continuous alcohol monitoring
14 that are paid by a State agency or a local government entity shall be paid pursuant to
15 G.S. 15A-1343(b1)(2c)b."

16 **SECTION 4.** G.S. 15A-534.1(a)(2) reads as rewritten:

- 17 "(2) A judge may impose the following conditions on pretrial release:
- 18 a. That the defendant stay away from the home, school, business or
19 place of employment of the alleged ~~victim;victim~~.
- 20 b. That the defendant refrain from assaulting, beating, molesting, or
21 wounding the alleged ~~victim;victim~~.
- 22 c. That the defendant refrain from removing, damaging or injuring
23 specifically identified ~~property;property~~.
- 24 d. That the defendant may visit his or her child or children at times and
25 places provided by the terms of any existing order entered by a
26 judge.
- 27 e. Either singly or in combination, that the defendant (i) abstain from
28 alcohol consumption, to be verified by continuous alcohol
29 monitoring, or (ii) submit to recommended treatment when alcohol
30 dependency or chronic abuse has been identified by a substance
31 abuse assessment. Imposition of continuous alcohol monitoring shall
32 be pursuant to the requirements of G.S. 15A-1343(b1)(2c).

33 The conditions set forth above may be imposed in addition to requiring that
34 the defendant execute a secured appearance bond."

35 **SECTION 5.** G.S. 15A-1343.2(f) reads as rewritten:

36 "(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding
37 judge specifically finds in the judgment of the court that delegation is not appropriate, the
38 Division of Community Corrections in the Department of Correction may require an offender
39 sentenced to intermediate punishment to:

- 40 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
41 law for this ~~supervision;supervision~~.
- 42 (2) Submit to a curfew which requires the offender to remain in a specified
43 place for a specified period each day and wear a device that permits the
44 offender's compliance with the condition to be monitored
45 ~~electronically;electronically~~.
- 46 (3) Submit to any or all of the following: substance abuse assessment,
47 assessment; ~~monitoring~~abstain from alcohol consumption, verified by
48 continuous alcohol monitoring, ~~or and treatment; ortreatment~~. The Division
49 may only impose a condition that the defendant submit to continuous alcohol
50 monitoring under the requirements set forth in G.S. 15A-1343(b1)(2c), to

1 include the court having determined whether a defendant should be required
2 to pay the costs of the monitoring.

3 (4) Participate in an educational or vocational skills development program.

4 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
5 Chapter 14 of the General Statutes, if the defendant is described by
6 G.S. 14-208.40(a)(2).

7 If the Division imposes any of the above requirements, then it may subsequently reduce or
8 remove those same requirements.

9 If the probation officer exercises authority delegated to him or her by the court pursuant to
10 this subsection, the offender may file a motion with the court to review the action taken by the
11 probation officer. The offender shall be given notice of the right to seek such a court review.
12 The Division may exercise any authority delegated to it under this subsection only if it first
13 determines that the offender has failed to comply with one or more of the conditions of
14 probation imposed by the court."

15 **SECTION 6.** G.S. 15A-1343.3 reads as rewritten:

16 "**§ 15A-1343.3. Department of ~~Corrections~~— Correction to establish regulations for**
17 **continuous alcohol monitoring systems.**

18 (a) The Department of Correction shall establish regulations for continuous alcohol
19 monitoring systems that are authorized for use by the ~~courts~~ courts, the Department, or the
20 Post-Release Parole and Probation Commission, as evidence that an offender on ~~probation~~
21 probation, parole, or pretrial release has abstained from the use of alcohol for a specified period
22 of time. A "continuous alcohol monitoring system" is a device that is worn by a person that can
23 detect, monitor, record, and report the amount of alcohol within the wearer's system over a
24 continuous 24-hour daily basis. The regulations shall include the procedures for supervision of
25 the offender, collection and monitoring of the results, and the transmission of the data to the
26 court for consideration by the court. All courts, including those using continuous alcohol
27 monitoring systems prior to July 4, 2007, shall comply with the regulations established by the
28 Department pursuant to this section.

29 (b) The Secretary, or the Secretary's designee, shall approve continuous alcohol
30 monitoring systems for the purposes set forth in subsection (a) of this section. ~~use by the courts~~
31 ~~prior to their use by a court as evidence of alcohol abstinence, or their use as a condition of~~
32 ~~probation.~~ The Secretary shall not unreasonably withhold approval of a continuous alcohol
33 monitoring system and shall consult with the Division of Purchase and Contract in the
34 Department of Administration to ensure that potential vendors are not discriminated against.

35 (c) Whenever a defendant or offender is ordered to abstain from alcohol consumption
36 "verified by continuous alcohol monitoring," the abstinence shall be verified by the use of an
37 approved continuous alcohol monitoring system as provided in this section."

38 **SECTION 7.** G.S. 20-19(d)(2) reads as rewritten:

39 "(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has
40 another offense involving impaired driving for which he has been convicted, which offense
41 occurred within three years immediately preceding the date of the offense for which his license
42 is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of
43 revocation is four years, and this period may be reduced only as provided in this section. The
44 Division may conditionally restore the person's license after it has been revoked for at least two
45 years under this subsection if he provides the Division with satisfactory proof that:

46 (1) He has not in the period of revocation been convicted in North Carolina or
47 any other state or federal jurisdiction of a motor vehicle offense, an alcoholic
48 beverage control law offense, a drug law offense, or any other criminal
49 offense involving the possession or consumption of alcohol or drugs; and

50 (2) He is not currently an excessive user of alcohol, drugs, or prescription drugs,
51 or unlawfully using any controlled substance. The person may voluntarily

1 submit themselves to continuous alcohol monitoring for the purpose of
 2 proving abstinence from alcohol consumption during a period of revocation
 3 immediately prior to the restoration consideration.

4 a. Monitoring periods of 120 days or longer shall be accepted by the
 5 Division as evidence of abstinence if the Division receives sufficient
 6 documentation that reflects that the person abstained from alcohol
 7 use during the monitoring period.

8 b. The continuous alcohol monitoring system shall be a system
 9 approved under G.S. 15A-1343.3(b).

10 c. The Division may establish guidelines for the acceptance of evidence
 11 of abstinence under this subdivision.

12 If the Division restores the person's license, it may place reasonable conditions or restrictions
 13 on the person for the duration of the original revocation period."

14 **SECTION 8.** G.S. 20-19(e1)(2) reads as rewritten:

15 "(e1) Notwithstanding subsection (e) of this section, the Division may conditionally
 16 restore the license of a person to whom subsection (e) applies after it has been revoked for at
 17 least three years under subsection (e) if the person provides the Division with satisfactory proof
 18 of all of the following:

19 (1) In the three years immediately preceding the person's application for a
 20 restored license, the person has not been convicted in North Carolina or in
 21 any other state or federal court of a motor vehicle offense, an alcohol
 22 beverage control law offense, a drug law offense, or any criminal offense
 23 involving the consumption of alcohol or drugs.

24 (2) The person is not currently an excessive user of alcohol, drugs, or
 25 prescription drugs, or unlawfully using any controlled substance. The person
 26 may voluntarily submit themselves to continuous alcohol monitoring for the
 27 purpose of proving abstinence from alcohol consumption during a period of
 28 revocation immediately prior to the restoration consideration.

29 a. Monitoring periods of 120 days or longer shall be accepted by the
 30 Division as evidence of abstinence if the Division receives sufficient
 31 documentation that reflects that the person abstained from alcohol
 32 use during the monitoring period.

33 b. The continuous alcohol monitoring system shall be a system
 34 approved under G.S. 15A-1343.3(b).

35 c. The Division may establish guidelines for the acceptance of evidence
 36 of abstinence under this subdivision."

37 **SECTION 9.** G.S. 20-179 reads as rewritten:

38 "**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
 39 **grossly aggravating and aggravating and mitigating factors; punishments.**

40 ...

41 (g) Level One Punishment. – A defendant subject to Level One punishment may be
 42 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
 43 that includes a minimum term of not less than 30 days and a maximum term of not more than
 44 24 months. The term of imprisonment may be suspended only if a condition of special
 45 probation is imposed ~~to require that requires~~ the defendant to (i) serve a term of imprisonment
 46 of at least 30 ~~days~~ days or (ii) abstain from the consumption of alcohol, verified by continuous
 47 alcohol monitoring, for at least 120 consecutive days, and comply with the treatment
 48 recommendations of the defendant's substance abuse assessment. If the defendant is placed on
 49 probation, the judge shall impose a requirement that the defendant obtain a substance abuse
 50 assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a

1 drivers license and as a condition of probation. The judge may impose any other lawful
2 condition of probation.

3 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be
4 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
5 includes a minimum term of not less than seven days and a maximum term of not more than 12
6 months. The term of imprisonment may be suspended only if a condition of special probation is
7 imposed ~~to require that requires~~ the defendant to (i) serve a term of imprisonment of at least
8 seven days, days, or (ii) abstain from the consumption of alcohol, verified by continuous
9 alcohol monitoring, for at least 90 consecutive days, and comply with the treatment
10 recommendations of the defendant's substance abuse assessment. If the defendant is placed on
11 probation, the judge shall impose a requirement that the defendant obtain a substance abuse
12 assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a
13 drivers license and as a condition of probation. The judge may impose any other lawful
14 condition of probation.

15 (h1) The judge may impose, as a condition of probation for defendants subject to Level
16 One or Level Two punishments, that the defendant abstain from alcohol consumption with
17 continuous alcohol monitoring for a minimum of 30 days, to a maximum of ~~60 days,~~ 120 days.
18 ~~as verified by a continuous alcohol monitoring system.~~ The total cost to the defendant for the
19 continuous alcohol monitoring system may not exceed ~~one thousand dollars (\$1,000).~~ one
20 thousand five hundred dollars (\$1,500). ~~The defendant's abstinence from alcohol shall be~~
21 ~~verified by a continuous alcohol monitoring system of a type approved by the Department of~~
22 ~~Correction.~~

23 (h2) ~~Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
24 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
25 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
26 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
27 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

28 (h3) ~~Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be~~
29 ~~paid to the clerk of court for the county in which the judgment was entered or the deferred~~
30 ~~prosecution agreement was filed. Fees or costs collected under this subsection shall be~~
31 ~~transmitted to the entity providing the continuous alcohol monitoring system.~~

32 ...

33 (k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol
34 Monitoring. – The court may order that, as a condition of special probation for any level of
35 offense under G.S. 20-179, that the defendant abstain from consuming alcohol, either with or
36 without continuous alcohol monitoring. The requirements and procedures set forth in
37 G.S. 15A-1343(b1)(2c) shall apply to any continuous alcohol monitoring that is authorized
38 under this Chapter.

39"

40 **SECTION 10.** G.S. 50-13.2 is amended by adding a new subsection to read:

41 "(b2) Any order for custody, including visitation, may as a condition of such custody or
42 visitation require either or both parents, or any other person seeking custody or visitation, to
43 abstain from consuming alcohol and may require submission to an approved continuous alcohol
44 monitoring system to verify compliance with this condition of custody or visitation. Failure to
45 comply with this condition shall be grounds for civil or criminal contempt."

46 **SECTION 11.** This act becomes effective December 1, 2009, and applies to all
47 criminal or civil proceedings, regardless of their commencement date.