

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 176
PROPOSED COMMITTEE SUBSTITUTE H176-PCS30360-TJ-15

Short Title: Review DV Program Participation.

(Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR REVIEW OF A DEFENDANT'S PARTICIPATION IN A COURT-ORDERED ABUSER TREATMENT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE, AND TO EXPAND THE TYPES OF OFFENSES REPORTED BY THE CLERK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(b) reads as rewritten:

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

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



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- 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. A defendant attending an abuser treatment
11 program shall abide by all of the rules of the program. If the defendant is
12 discharged from the program for failure to comply with the program or its
13 rules, such noncompliance shall be reported to the court. The probation
14 officer shall forward a copy of the judgment, including all conditions of
15 probation to the program, and the abuser treatment program shall notify the
16 probation officer of any violations of program rules by the defendant.
- 17 (13) Submit at reasonable times to warrantless searches by a probation officer of
18 the probationer's person and of the probationer's vehicle and premises while
19 the probationer is present, for purposes directly related to the probation
20 supervision, but the probationer may not be required to submit to any other
21 search that would otherwise be unlawful. Whenever the warrantless search
22 consists of testing for the presence of illegal drugs, the probationer may also
23 be required to reimburse the Department of Correction for the actual cost of
24 drug screening and drug testing, if the results are positive.
- 25 (14) Submit to warrantless searches by a law enforcement officer of the
26 probationer's person and of the probationer's vehicle, upon a reasonable
27 suspicion that the probationer is engaged in criminal activity or is in
28 possession of a firearm, explosive device, or other deadly weapon listed in
29 G.S. 14-269 without written permission of the court.
- 30 (15) Not use, possess, or control any illegal drug or controlled substance unless it
31 has been prescribed for him or her by a licensed physician and is in the
32 original container with the prescription number affixed on it; not knowingly
33 associate with any known or previously convicted users, possessors, or
34 sellers of any such illegal drugs or controlled substances; and not knowingly
35 be present at or frequent any place where such illegal drugs or controlled
36 substances are sold, kept, or used.

37 A defendant shall not pay costs associated with a substance abuse monitoring program or
38 any other special condition of probation in lieu of, or prior to, the payments required by this
39 subsection.

40 In addition to these regular conditions of probation, a defendant required to serve an active
41 term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or
42 G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and
43 regulations of the Department of Correction governing the conduct of inmates while
44 imprisoned and report to a probation officer in the State of North Carolina within 72 hours of
45 his discharge from the active term of imprisonment.

46 Regular conditions of probation apply to each defendant placed on supervised probation
47 unless the presiding judge specifically exempts the defendant from one or more of the
48 conditions in open court and in the judgment of the court. It is not necessary for the presiding
49 judge to state each regular condition of probation in open court, but the conditions must be set
50 forth in the judgment of the court.

1 Defendants placed on unsupervised probation are subject to the provisions of this
2 subsection, except that defendants placed on unsupervised probation are not subject to the
3 regular conditions contained in subdivisions (2), (3), (6), (8), (11), (13), (14), and (15) of this
4 subsection. If a defendant placed on unsupervised probation is subject to the condition
5 contained in subdivision (12) of this subsection, the court shall schedule a compliance review
6 hearing within 60 days of judgment and every 60 days thereafter until the defendant completes
7 the abuser treatment program."

8 **SECTION 2.** G.S. 15A-1382.1 reads as rewritten:

9 **"§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

10 (a) If the court finds that a defendant is guilty of an offense, including, but not limited
11 to acts as defined in G.S. 50B-1(a).~~When a defendant is found guilty of an offense involving~~
12 ~~assault, or communicating a threat,~~ the presiding judge shall determine whether the defendant
13 and victim had a personal relationship. If the judge determines that there was a personal
14 relationship between the defendant and the victim, then the judge shall indicate on the form
15 reflecting the judgment that the case involved domestic violence. The clerk of court shall insure
16 that the official record of the defendant's conviction includes the court's determination, so that
17 any inquiry into the defendant's criminal record will reflect that the offense involved domestic
18 violence.

19 (b) ~~If the presiding judge determines that there was a personal relationship between the~~
20 ~~defendant and the victim, and a sentence to community punishment is imposed, the judge shall~~
21 ~~determine whether the defendant shall comply with one or more of the special conditions of~~
22 ~~probation set forth at G.S. 15A-1343(b1), in addition to any other authorized punishment.~~
23 ~~Notwithstanding the provisions of G.S. 15A-1340.11(6)c, the court may require the defendant~~
24 ~~to comply with the provisions of G.S. 15A-1343(b1)(3c).~~

25 (b)(e) The following definitions apply to this section:

26 (1) ~~"An offense involving assault" includes any offense where an assault~~
27 ~~occurred, whether or not the conviction is for an offense under Article 8 of~~
28 ~~Chapter 14 of the General Statutes.~~

29 (1)(2) "Inquiry" shall include any lawful review of the criminal records of persons
30 convicted of an offense in this State, whether by law enforcement personnel
31 or by private individuals.

32 (2)(3) "Personal relationship" is as defined in G.S. 50B-1(b)."

33 **SECTION 3.** This act becomes effective December 1, 2011, and applies to
34 defendants placed on probation on or after that date.