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SENATE BILL DRS15072-MS-99 (03/13)

Short Title: Interstate Compact Bill. (Public)

Sponsors: Senator Randleman (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO IMPOSE CUSTODIAL SANCTIONS AND OTHER
CONDITIONS IN RESPONSE TO VIOLATION ON AN OUT-OF-STATE PROBATION
OFFENDER; TO CLARIFY THE LANGUAGE CONCERNING HEARING
PROCEDURES FOR OFFENDERS BEING SUPERVISED UNDER THE INTERSTATE
COMPACT; AND TO ALLOW THE SECTION OF COMMUNITY CORRECTIONS TO
IMPOSE ADDITIONAL CONDITIONS OF PROBATION SUPERVISION FOR
OFFENDERS BEING SUPERVISED UNDER THE INTERSTATE COMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344 is amended by adding a new subsection to read:

"§ 15A-1344. **Response to violations; alteration and revocation.**

...

(d2) **Confinement in Response to Violation.** – When a defendant under supervision for a felony conviction has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement of 90 consecutive days to be served in the custody of the Division of Adult Correction of the Department of Public Safety. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. The 90-day term of confinement ordered under this subsection for a felony shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence. However, if the time remaining on the maximum imposed sentence on a defendant under supervision for a felony conviction is 90 days or less, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement pursuant to G.S. 15A-1343(a1)(3). The court may not revoke probation unless the defendant has previously received at least two periods of confinement for violating a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). Those periods of confinement may have been imposed pursuant to G.S. 15A-1343(a1)(3), 15A-1343.2(e)(5), or 15A-1343.2(f)(6). The second period of confinement must have been imposed for a violation that occurred after the defendant served the first period of confinement. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction not sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation



1 other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of
2 confinement of up to 90 consecutive days to be served where the defendant would have served
3 an active sentence. The court may not revoke probation unless the defendant has previously
4 received a total of two periods of confinement under this subsection. A defendant may receive
5 only two periods of confinement under this subsection. Confinement under this section shall be
6 credited pursuant to G.S. 15-196.1.

7 (d3) Where probation supervision of an offender in this State is being administered
8 pursuant to the Interstate Compact for Adult Offender Supervision established by
9 G.S. 148-65.5, which carries the weight of federal law and requires supervision consistent with
10 the supervision of other similar offenders sentenced in this State, the court may, after notice
11 and hearing pursuant to G.S. 15A-1345 and upon finding that the offender violated one or more
12 conditions of probation, impose a custodial sanction in accordance with subdivision (1), (2), or
13 (3) of this subsection and any other condition listed in G.S. 15A-1343 with the exception of an
14 active term of imprisonment as a condition of special probation and criminal contempt. At no
15 time is the court authorized to alter any condition imposed by the sending state, extend, transfer
16 to unsupervised, revoke, or terminate the period of probation supervision.

17 (1) When an offender under probation supervision for a felony conviction has
18 violated a condition of probation, the court may impose a period of
19 confinement for 90 consecutive days to be served in the custody of the
20 Division of Adult Correction of the Department of Public Safety. An
21 offender may receive only two periods of confinement under this
22 subdivision. The 90-day term of confinement ordered under this subdivision
23 for a felony shall not be reduced by credit for time already served in the
24 case. Any such credit shall instead be applied to the suspended sentence.

25 (2) When an offender under probation supervision for a misdemeanor
26 conviction has violated a condition of probation, the court may impose a
27 period or periods of confinement in a local confinement facility for a total of
28 no more than six days per month during any three separate months during
29 the period of probation. The six days per month confinement provided for in
30 this subdivision may only be imposed as two-day or three-day consecutive
31 periods. When a defendant is on probation for multiple judgments,
32 confinement periods imposed under this subdivision shall run concurrently
33 and may total no more than six days per month.

34 (3) When an offender under supervision for a misdemeanor impaired driving
35 conviction has violated a condition of probation, the court may impose a
36 period of confinement of up to 90 consecutive days to be served in the
37 Statewide Misdemeanant Confinement Program. An offender may receive
38 only two periods of confinement under this subdivision. Confinement under
39 this subdivision shall be credited pursuant to G.S. 15-196.1.

40 If the time remaining on the maximum imposed sentence is equal to or less than the period
41 of confinement that may be imposed in subdivision (1), (2), or (3) of this subsection, then
42 confinement may not be ordered in response to the violation. The period of confinement
43 imposed under this subsection on a defendant who is on probation for multiple offenses shall
44 run concurrently on all cases related to the violation. Confinement shall be immediate unless
45 otherwise specified by the court.

46"

47 **SECTION 2.** G.S. 148-65.8 reads as rewritten:

48 "**§ 148-65.8. Interstate parole and probation hearing ~~procedures.~~ procedures for retaking**
49 **by the sending state.**

50 (a) Where supervision of an offender is being administered pursuant to the Interstate
51 Compact for Adult Offender Supervision, the appropriate judicial or administrative authorities

1 in this State shall notify the Compact Administrator of the sending state whenever, in their
 2 view, consideration should be given to retaking ~~or reincarceration~~ for a parole, probation, or
 3 post-release supervision violation. Prior to the giving of any such notification, a hearing shall
 4 be held in accordance with this section within a reasonable time, unless such hearing is waived
 5 by the offender. Pending any proceeding pursuant to this section, the appropriate officers of this
 6 State may take custody of and detain the offender involved for a period not to exceed 15 days
 7 prior to the hearing. The offender shall not be entitled to bail pending the hearing.

8 ...
 9 (c1) A record of the hearing shall be made and preserved. As soon as practicable
 10 following termination of any hearing conducted pursuant to this section or the waiver of such
 11 hearing, the appropriate officer or officers of this State shall report to the sending state, furnish
 12 a copy of the hearing record, and make recommendations regarding the disposition to be made
 13 of the offender by the sending state. If the hearing recommendation is to retake ~~or reincarcerate~~
 14 the offender, the hearing officer or officers may detain the offender until notice is received
 15 from the sending state. If the sending state provides notice that it intends to retake ~~or~~
 16 ~~reincarcerate~~ the offender, the offender shall remain in custody for such reasonable period after
 17 the hearing or waiver as may be necessary to arrange for the ~~retaking~~ ~~or~~
 18 ~~reincarceration~~ retaking.

19"

20 **SECTION 3.** G.S. 15A-1343.2 is amended by adding a new subsection to read:
 21 "**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

22 ...

23 (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

24 (g1) Supervision Under Interstate Compact for Adult Offender Supervision. – In all cases
 25 in which probation supervision of an offender in this State is being administered pursuant to the
 26 Interstate Compact for Adult Offender Supervision established by G.S. 148-65.5, the Section of
 27 Community Corrections of the Division of Adult Correction of the Department of Public Safety
 28 may require an offender to do any of the following:

- 29 (1) Perform up to 20 hours of community service and pay the fee prescribed by
 30 law for that supervision.
- 31 (2) Report to the offender's probation officer on a frequency to be determined by
 32 the officer.
- 33 (3) Submit to substance abuse assessment, monitoring, or treatment.
- 34 (4) Submit to house arrest with electronic monitoring.
- 35 (5) Submit to a period or periods of confinement in a local confinement facility
 36 for a total of no more than six days per month during any three separate
 37 months during the period of supervision. The six days per month
 38 confinement period provided for in this subdivision may only be imposed as
 39 two-day or three-day consecutive periods. When a defendant is under
 40 supervision for multiple judgments, confinement periods imposed under this
 41 subdivision shall run concurrently and total no more than six days per
 42 month.
- 43 (6) Submit to a curfew that requires the offender to remain in a specified place
 44 for a specified period each day and wear a device that permits the offender's
 45 compliance with the condition to be monitored electronically.
- 46 (7) Participate in an educational or vocational skills development program,
 47 including an evidence-based program.
- 48 (8) Obtain a specific sex offender assessment and follow all recommended
 49 treatment.
- 50 (9) Obtain a mental health assessment and follow all recommended treatment.

1 If the Section of Community Corrections imposes any of the above requirements, then it
2 may subsequently reduce or remove those same requirements. The Section of Community
3 Corrections may impose the conditions under this subsection only if it first determines that the
4 offender has failed to comply with one or more of the conditions of supervision or the offender
5 is determined to be high risk based upon the results of the risk assessment in G.S. 15A-1343.2
6 except that the condition provided for in subdivision (5) of this subsection may not be imposed
7 unless the Section determines that the offender failed to comply with one or more of the
8 conditions of supervision.

9"

10 **SECTION 4.** G.S. 14-208.40B is amended by adding a new subsection to read:

11 "**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**
12 **circumstances.**

13 ...

14 (c) At the hearing, the court shall determine if the offender falls into one of the
15 categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings
16 of fact pursuant to G.S. 14-208.40A.

17 If the court finds that (i) the offender has been classified as a sexually violent predator
18 pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an
19 aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.23 or
20 G.S. 14-27.28, the court shall order the offender to enroll in satellite-based monitoring for life.

21 If the court finds that the offender committed an offense that involved the physical, mental,
22 or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of
23 G.S. 14-27.23 or G.S. 14-27.28, and the offender is not a recidivist, the court shall order that
24 the Division of Adult Correction do a risk assessment of the offender. The Division of Adult
25 Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk
26 assessment of the offender and report the results to the court. The Division of Adult Correction
27 may use a risk assessment of the offender done within six months of the date of the hearing.

28 Upon receipt of a risk assessment from the Division of Adult Correction, the court shall
29 determine whether, based on the Division of Adult Correction's risk assessment, the offender
30 requires the highest possible level of supervision and monitoring. If the court determines that
31 the offender does require the highest possible level of supervision and monitoring, the court
32 shall order the offender to enroll in a satellite-based monitoring program for a period of time to
33 be specified by the court.

34 (d) When an offender from another state is transferred to North Carolina under the
35 Interstate Compact and the crime for which the offender will be under supervision in North
36 Carolina equates to a reportable conviction under G.S. 14-208.6(4) but the court of the state
37 transferring the offender did not consider or order satellite-based monitoring, a court of this
38 State shall consider whether the offender's criminal conviction is one that requires
39 satellite-based monitoring. The procedure for making that determination shall be as follows:

40 (1) The offender shall receive notice, before being transferred to North Carolina,
41 that the offender may be subject to a judicial hearing in North Carolina to
42 determine whether the offender's conviction requires the offender to enroll in
43 satellite-based monitoring.

44 (2) The Division of Adult Correction shall make an initial determination as to
45 whether the offender's crime is a reportable conviction under North Carolina
46 law.

47 (3) The district attorney in the judicial district where the offender will be
48 supervised shall schedule a hearing in the appropriate court in that judicial
49 district to determine whether the offender must enroll in satellite-based
50 monitoring. The Division of Adult Correction shall notify the offender of the
51 Division's determination and the date of the scheduled hearing by certified

1 mail sent to the address provided by the offender. The hearing shall be
2 scheduled no sooner than 15 days from the date the notification is mailed.
3 Receipt of notification shall be presumed to be the date indicated by the
4 certified mail receipt. If the court determines that an offender is indigent and
5 entitled to counsel, the court shall assign counsel to represent the offender at
6 the hearing pursuant to rules adopted by the Office of Indigent Defense
7 Services. At the hearing, the court shall determine whether the offender's
8 crime constitutes a reportable conviction under North Carolina Law and
9 shall make findings of fact pursuant to G.S. 14-208.40A.

10 (4) If the court determines that the offender may be classified as a sexually
11 violent predator, is a recidivist, committed an aggravated offense, or
12 committed a crime substantially similar to G.S. 14-27.2A or G.S. 14-27.4A,
13 the court shall order the offender to enroll in satellite-based monitoring for
14 the duration of the period of supervision in this State.

15 (5) If the court finds that the offender committed an offense involving the
16 physical, mental, or sexual abuse of a minor but the offense is not one
17 described in subdivision (4) of this subsection, and the Division of Adult
18 Correction's risk assessment requires the highest possible level of
19 supervision and monitoring, the court shall order the offender to enroll in
20 satellite-based monitoring for the duration of the period of supervision in
21 this State."

22 **SECTION 5.** This act becomes effective December 1, 2017, and applies to
23 offenders placed on probation on or after that date.