

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 369
PROPOSED COMMITTEE SUBSTITUTE H369-PCS10281-SA-9

Short Title: Community Corrections and Probations.

(Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROBATION OFFICERS WITH ADDITIONAL POWERS WHEN
3 ON PRISON PROPERTY AND WHEN RENDERING ASSISTANCE TO LAW
4 ENFORCEMENT OFFICERS AT THE OFFICERS' REQUEST; TO PROVIDE THAT
5 PROBATIONERS MUST SUBMIT TO A CURFEW SET BY THE PROBATION
6 OFFICER AND TO SUBMIT TO WARRANTLESS SEARCHES OF A
7 PROBATIONER'S PERSON, PROPERTY, RESIDENCE, VEHICLE, AND CELL
8 PHONE; TO PROVIDE THAT OFFENDERS MUST OBTAIN A SEX OFFENDER
9 ASSESSMENT AND A MENTAL HEALTH ASSESSMENT AND FOLLOW ALL
10 RECOMMENDATIONS; AND TO PROVIDE THAT PROBATION OFFICERS HAVE
11 DELEGATED AUTHORITY TO REQUIRE OFFENDERS ON SUPERVISED
12 PROBATION FOR CONDITIONAL DISCHARGE OR DEFERRED PROSECUTION,
13 OR SENTENCED PURSUANT TO G.S. 20-179, TO COMPLY WITH ADDITIONAL
14 CONDITIONS OF PROBATION.

15 The General Assembly of North Carolina enacts:

16 SECTION 1. G.S. 15-205 reads as rewritten:

17 "§ 15-205. Duties and powers of the probation officers.

18 (a) A probation officer shall investigate all cases referred to him for investigation by the
19 judges of the courts or by the Secretary of Public Safety. Such officer shall keep informed
20 concerning the conduct and condition of each person on probation under his supervision by
21 visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the
22 court or the Secretary of Public Safety may require. Such officer shall use all practicable and
23 suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of
24 Public Safety, to aid and encourage persons on probation to bring about improvement in their
25 conduct and condition. Such officer shall keep detailed records of his work; shall make such
26 reports in writing to the Secretary of Public Safety as he may require; and shall perform such
27 other duties as the Secretary of Public Safety may require. A probation officer shall have, in the
28 execution of his duties, the powers of arrest and, to the extent necessary for the performance of
29 his duties, the same right to execute process as is now given, or that may hereafter be given by
30 law, to the sheriffs of this State.

31 (b) Probation officers shall have the authority of peace officers on prison property for
32 the purpose of protecting life and property, for the purpose of transferring prisoners from place
33 to place as their duties might require, and for apprehending, arresting, and returning to prison
34 escaped prisoners.

35 (c) Probation officers shall have authority to assist law enforcement officers in effecting
36 arrests and preventing escapes from custody when requested to do so by the officer or when, in



* H 3 6 9 - P C S 1 0 2 8 1 - S A - 9 *

1 the judgment of the probation officer, such assistance is necessary. When rendering assistance
 2 pursuant to this provision, probation officers have the same authority to effect an arrest or
 3 prevent escape from custody as the officer making the request."

4 **SECTION 2.** G.S. 15A-1343 reads as rewritten:

5 **"§ 15A-1343. Conditions of probation.**

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

8 (a1) Community and Intermediate Probation Conditions. – In addition to any conditions
 9 a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any
 10 one or more of the following conditions as part of a community or intermediate punishment:

11 (1) House arrest with electronic monitoring.

12 (1a) Submit to a curfew, as determined by the probation officer, which may be
 13 monitored electronically.

14 (2) Perform community service and pay the fee prescribed by law for this
 15 supervision.

16 (3) Submission to a period or periods of confinement in a local confinement
 17 facility for a total of no more than six days per month during any three
 18 separate months during the period of probation. The six days per month
 19 confinement provided for in this subdivision may only be imposed as
 20 two-day or three-day consecutive periods. When a defendant is on probation
 21 for multiple judgments, confinement periods imposed under this subdivision
 22 shall run concurrently and may total no more than six days per month.

23 (4) Substance abuse assessment, monitoring, or treatment.

24 (4a) Abstain from alcohol consumption and submit to continuous alcohol
 25 monitoring when alcohol dependency or chronic abuse has been identified
 26 by a substance abuse assessment.

27 (5) Participation in an educational or vocational skills development program,
 28 including an evidence-based program.

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

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

33 ...

34 (13) ~~Submit at reasonable times to warrantless and suspicionless searches by a~~
 35 ~~probation officer or by a law enforcement officer while assisting a~~
 36 ~~probation officer, of the probationer's person and of the probationer's vehicle~~
 37 ~~and premises person, property, place of residence, vehicle, and personal~~
 38 ~~effects, while the probationer is present, for purposes directly related to the~~
 39 ~~probation supervision, but the present. Submit to warrantless searches by a~~
 40 ~~probation officer, or by a law enforcement officer while assisting a probation~~
 41 ~~officer, of the probationer's cell phone, computer, or other electronic device,~~
 42 ~~while the probationer is present, for purposes reasonably related to the~~
 43 ~~probation supervision. The probationer may not be required to submit to any~~
 44 ~~other search that would otherwise be unlawful.~~

45"

46 **SECTION 3.** G.S. 15A-1368.4(e)(10) reads as rewritten:

47 **"§ 15A-1368.4. Conditions of post-release supervision.**

48 ...

49 (e) Controlling Conditions. – Appropriate controlling conditions, violation of which
 50 may result in revocation of post-release supervision, are:

51 ...

1 (10) ~~Submit at reasonable times to~~ warrantless and suspicionless searches by a
 2 probation or parole officer or by a law enforcement officer while assisting a
 3 probation or parole officer of the supervisee's person by a post-release
 4 supervision officer for purposes reasonably related to the post-release
 5 supervision. person, property, place of residence, vehicle, and personal
 6 effects while the supervisee is present. Submit to warrantless searches by a
 7 probation officer, or by a law enforcement officer while assisting a probation
 8 officer, of the supervisee's cell phone, computer, or other electronic device,
 9 while the supervisee is present, for purposes reasonably related to the
 10 post-release supervision. The Commission shall not require as a condition of
 11 post-release supervision that the supervisee submit to any other searches that
 12 would otherwise be unlawful. Whenever the search consists of testing for the
 13 presence of illegal drugs, the supervisee may also be required to reimburse
 14 the Division of Adult Correction of the Department of Public Safety for the
 15 actual cost of drug testing and drug screening, if the results are positive."

16 **SECTION 4.** G.S. 15A-1374(b)(11) reads as rewritten:

17 **"§ 15A-1374. Conditions of parole.**

18 ...

19 (b) Appropriate Conditions. – As conditions of parole, the Commission may require
 20 that the parolee comply with one or more of the following conditions:

21 ...

22 (11) ~~Submit at reasonable times to~~ warrantless and suspicionless searches by a
 23 probation or parole officer of the parolee's person and of the parolee's
 24 vehicle and premises person, property, place of residence, vehicle, and
 25 personal effects, while the parolee is present, for purposes reasonably related
 26 to the parole supervision. present. Submit to warrantless searches by a
 27 probation or parole officer, or by a law enforcement officer while assisting a
 28 probation or parole officer, of the parolee's cell phone, computer, or other
 29 electronic device, while the parolee is present, for purposes reasonably
 30 related to the parole supervision. The Commission may not require as a
 31 condition of parole that the parolee submit to any other searches that would
 32 otherwise be unlawful. ~~If the parolee has been convicted of an offense which~~
 33 ~~is a reportable conviction as defined in G.S. 14-208.6(4), or which involves~~
 34 ~~the physical, mental, or sexual abuse of a minor, warrantless searches of the~~
 35 ~~parolee's computer or other electronic mechanism which may contain~~
 36 ~~electronic data shall be considered reasonably related to the parole~~
 37 ~~supervision.~~ Whenever the search consists of testing for the presence of
 38 illegal drugs, the parolee may also be required to reimburse the Division of
 39 Adult Correction of the Department of Public Safety for the actual cost of
 40 drug testing and drug screening, if the results are positive."

41 **SECTION 5.** G.S. 15A-101.1 reads as rewritten:

42 **"§ 15A-101.1. Electronic technology in criminal process and procedure.**

43 As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General
 44 Statutes, and in all other provisions of the General Statutes that deal with criminal process or
 45 procedure:

46 ...

47 (3a) "Electronic monitoring" or "electronically monitor" or "satellite-based
 48 monitoring" means monitoring with an electronic monitoring device ~~that is~~
 49 ~~not removed from a person's body,~~ that is utilized by the supervising agency
 50 in conjunction with a Web-based computer system that actively ~~monitors,~~
 51 ~~identifies, tracks, and records a person's location at least once every minute~~

24 hours a day, that has a battery life of at least 48 hours without being recharged, that monitors a person's location, timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.

...."

SECTION 6. G.S. 15A-1343.2 reads as rewritten:

"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.

...

(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to community punishment to do any of the following:

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

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

The probation officer may exercise authority delegated to him or her by the court pursuant to ~~subsection (e) of this section-subsection~~ after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation ~~imposed by the court~~ or the offender is

1 determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2,
2 except that the condition at subdivision (5) of this subsection may not be imposed unless the
3 Section determines that the offender failed to comply with one or more of the conditions
4 ~~imposed by the court of probation.~~ Nothing in this section shall be construed to limit the
5 availability of the procedures authorized under G.S. 15A-1345.

6 The Division shall adopt guidelines and procedures to implement the requirements of this
7 section, which shall include a supervisor's approval prior to exercise of the delegation of
8 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5)
9 of this subsection, the probationer must first be presented with a violation report, with the
10 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
11 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the
12 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses
13 who have relevant information concerning the alleged violations; and (iv) to examine any
14 witnesses or evidence. The probationer may be confined for the period designated on the
15 violation report upon the execution of a waiver of rights signed by the probationer and by two
16 officers acting as witnesses. Those two witnesses shall be the probation officer and another
17 officer to be designated by the Chief of the Community Corrections Section in written Division
18 policy.

19 (e1) Delegation to Probation Officer for Supervision for Conditional Discharge and
20 Deferred Prosecution. – Unless the presiding judge specifically finds in the judgment of the
21 court that delegation is not appropriate, the Section of Community Corrections of the Division
22 of Adult Correction of the Department of Public Safety may require an offender placed on
23 supervised probation for a conditional discharge or a deferred prosecution to comply with any
24 of the conditions in subsection (e) of this section with the exception of subdivision (5) of
25 subsection (e) of this section. If the Section of Community Corrections imposes any of the
26 conditions in subsection (e) of this section, then it may subsequently reduce or remove those
27 same conditions. The probation officer may exercise authority delegated to him or her by the
28 court pursuant to this subsection after administrative review and approval by a chief probation
29 officer. The offender may file a motion with the court to review the action taken by the
30 probation officer. The offender shall be given notice of the right to seek such a court review.
31 The Section of Community Corrections may exercise any authority delegated to it under this
32 subsection only if it first determines that the offender has failed to comply with one or more of
33 the conditions of probation or the offender is determined to be high risk based on the results of
34 a validated instrument to assess each probationer for risk of reoffending. Nothing in this section
35 shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

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 Section of Community Corrections of the Division of Adult Correction of the Department of
39 Public Safety may require an offender sentenced to intermediate punishment to do any of the
40 following:

- 41 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
42 law for this supervision.
- 43 (2) Submit to a curfew which requires the offender to remain in a specified
44 place for a specified period each day and wear a device that permits the
45 offender's compliance with the condition to be monitored electronically.
- 46 (3) Submit to substance abuse assessment, monitoring or treatment, including
47 continuous alcohol monitoring when abstinence from alcohol consumption
48 has been specified as a term of probation.
- 49 (4) Participate in an educational or vocational skills development program,
50 including an evidence-based program.

- 1 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
2 Chapter 14 of the General Statutes, if the defendant is described by
3 G.S. 14-208.40(a)(2).
4 (6) Submit to a period or periods of confinement in a local confinement facility
5 for a total of no more than six days per month during any three separate
6 months during the period of probation. The six days per month confinement
7 provided for in this subdivision may only be imposed as two-day or
8 three-day consecutive periods. When a defendant is on probation for
9 multiple judgments, confinement periods imposed under this subdivision
10 shall run concurrently and may total no more than six days per month.
11 (7) Submit to house arrest with electronic monitoring.
12 (8) Report to the offender's probation officer on a frequency to be determined by
13 the officer.
14 (9) Obtain a specific sex offender assessment and follow all recommended
15 treatment.
16 (10) Obtain a mental health assessment and follow all recommended treatment.

17 If the Section imposes any of the above requirements, then it may subsequently reduce or
18 remove those same requirements.

19 The probation officer may exercise authority delegated to him or her by the court pursuant
20 to this subsection (f) of this section after administrative review and approval by a Chief
21 Probation Officer. The offender may file a motion with the court to review the action taken by
22 the probation officer. The offender shall be given notice of the right to seek such a court
23 review. However, the offender shall have no right of review if he or she has signed a written
24 waiver of rights as required by this subsection. The Section may exercise any authority
25 delegated to it under this subsection only if it first determines that the offender has failed to
26 comply with one or more of the conditions of probation ~~imposed by the court~~ or the offender is
27 determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2,
28 except that the condition at subdivision (6) of this subsection may not be imposed unless the
29 Section determines that the offender failed to comply with one or more of the conditions
30 ~~imposed by the court of probation~~. Nothing in this section shall be construed to limit the
31 availability of the procedures authorized under G.S. 15A-1345.

32 The Division shall adopt guidelines and procedures to implement the requirements of this
33 section, which shall include a supervisor's approval prior to exercise of the delegation of
34 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6)
35 of this subsection, the probationer must first be presented with a violation report, with the
36 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
37 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the
38 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses
39 who have relevant information concerning the alleged violations; and (iv) to examine any
40 witnesses or evidence. The probationer may be confined for the period designated on the
41 violation report upon the execution of a waiver of rights signed by the probationer and by two
42 officers acting as witnesses. Those two witnesses shall be the probation officer and another
43 officer to be designated by the Chief of the Community Corrections Section in written Division
44 policy.

45 (f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. –
46 Notwithstanding any other provision of this section, the court shall impose satellite-based
47 monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a
48 condition of probation on any offender who is described by G.S. 14-208.40(a)(1).

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

50 (h) Definitions. – For purposes of this section, the definitions in G.S. 15A-1340.11
51 apply."

1 **SECTION 7.** G.S. 20-179 is amended by adding a new subsection to read:
2 "**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
3 **grossly aggravating and aggravating and mitigating factors; punishments.**

4 ...
5 (k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section,
6 if the court finds, upon good cause shown, that the defendant should not be required to pay the
7 costs of the continuous alcohol monitoring system, the court shall not impose the use of a
8 continuous alcohol monitoring system unless the local governmental entity responsible for the
9 incarceration of the defendant in the local confinement facility agrees to pay the costs of the
10 system.

11 (k5) Delegation to Probation Officer. – Unless the presiding judge specifically finds in
12 the judgment of the court that delegation is not appropriate, the Section of Community
13 Corrections of the Division of Adult Corrections of the Department of Public Safety may
14 require an offender sentenced pursuant to this section and placed on supervised probation to do
15 any of the following:

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

37 If the Section imposes any of the above requirements, then it may subsequently reduce or
38 remove those same requirements.

39 The probation officer may exercise authority delegated to him or her by the court pursuant
40 to this subsection after administrative review and approval by a Chief Probation Officer. The
41 offender may file a motion with the court to review the action taken by the probation officer.
42 The offender shall be given notice of the right to seek such a court review. However, the
43 offender shall have no right of review if he or she has signed a written waiver of rights as
44 required by this subsection. The Section may exercise any authority delegated to it under this
45 subsection only if it first determines that the offender has failed to comply with one or more of
46 the conditions of probation or the offender is determined to be high risk based on the results of
47 a validated instrument to assess each probationer for risk of reoffending, except that the
48 condition at subdivision (5) of this subsection may not be imposed unless the Section
49 determines that the offender failed to comply with one or more of the conditions of probation.
50 Nothing in this section shall be construed to limit the availability of the procedures authorized
51 under G.S. 15A-1345.

1 The Division shall adopt guidelines and procedures to implement the requirements of this
2 section, which shall include a supervisor's approval prior to exercise of the delegation of
3 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5)
4 of this subsection, the probationer must first be presented with a violation report, with the
5 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
6 violation, with the right to present relevant oral and written evidence, (ii) to have counsel at the
7 hearing and that one will be appointed if the probationer is indigent, (iii) to request witnesses
8 who have relevant information concerning the alleged violations, and (iv) to examine any
9 witnesses or evidence. The probationer may be confined for the period designated on the
10 violation report upon the execution of a waiver of rights signed by the probationer and by two
11 officers acting as witnesses. Those two witnesses shall be the probation officer and another
12 officer to be designated by the Director of the Community Corrections Section in written
13 Division policy."

14 **SECTION 8.** Sections 2, 3, 4, 6, and 7 of this act become effective December 1,
15 2017, and apply to offenses committed on or after that date. The remainder of this act is
16 effective when it becomes law.