

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS65211-MA-222 (3/8)

Short Title: Alcohol Monitoring Systems for DWI Offenders. (Public)

Sponsors: Senators Snow, and Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(d) reads as rewritten:

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 The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

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

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if he provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

1 (2) He has not in the period of revocation been convicted in North
2 Carolina or any other state or federal jurisdiction of a motor vehicle
3 offense, an alcoholic beverage control law offense, or a drug law
4 offense, or any other criminal offense involving the possession or
5 consumption of alcohol or drugs.

6 (3) He is also not currently an excessive user of prescription drugs.

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

9 **SECTION 2.** G.S. 20-19(e) reads as rewritten:

10 "(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has
11 two or more previous offenses involving impaired driving for which he has been
12 convicted, and the most recent offense occurred within the five years immediately
13 preceding the date of the offense for which his license is being revoked, the revocation
14 is permanent. The Division may, however, conditionally restore the person's license
15 after it has been revoked for at least three years under this subsection if he provides the
16 Division with satisfactory proof that:

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

22 (2) He is not currently an excessive user of alcohol or prescription drugs.

23 The Division may conditionally restore the person's license after it has been revoked
24 for at least 18 months under G.S. 20-17(a)(2) if the person provides the Division with
25 satisfactory proof that:

26 (1) He has not consumed any alcohol for 18 months while being
27 monitored by continuous alcohol monitoring devices.

28 (2) He has not in the period of revocation been convicted in North
29 Carolina or any other state or federal jurisdiction of a motor vehicle
30 offense, an alcoholic beverage control law offense, a drug law offense,
31 or any other criminal offense involving the possession or consumption
32 of alcohol or drugs.

33 (3) He is not currently an excessive user of prescription drugs.

34 If the Division restores the person's license, it may place reasonable conditions or
35 restrictions on the person for any period up to three years from the date of restoration."

36 **SECTION 3.** G.S. 20-179(e) reads as rewritten:

37 "(e) Mitigating Factors to Be Weighed. – The judge shall also determine before
38 sentencing under subsection (f) whether any of the mitigating factors listed below apply
39 to the defendant. The judge shall weigh the degree of mitigation of each factor in light
40 of the particular circumstances of the case. The factors are:

41 (1) Slight impairment of the defendant's faculties resulting solely from
42 alcohol, and an alcohol concentration that did not exceed 0.09 at any
43 relevant time after the driving.

- 1 (2) Slight impairment of the defendant's faculties, resulting solely from
2 alcohol, with no chemical analysis having been available to the
3 defendant.
- 4 (3) Driving at the time of the offense that was safe and lawful except for
5 the impairment of the defendant's faculties.
- 6 (4) A safe driving record, with the defendant's having no conviction for
7 any motor vehicle offense for which at least four points are assigned
8 under G.S. 20-16 or for which the person's license is subject to
9 revocation within five years of the date of the offense for which the
10 defendant is being sentenced.
- 11 (5) Impairment of the defendant's faculties caused primarily by a lawfully
12 prescribed drug for an existing medical condition, and the amount of
13 the drug taken was within the prescribed dosage.
- 14 (6) The defendant's voluntary submission to a mental health facility for
15 assessment after he was charged with the impaired driving offense for
16 which he is being sentenced, and, if recommended by the facility, his
17 voluntary participation in the recommended treatment.
- 18 (6a) Completion of a mandated substance abuse assessment, compliance
19 with its recommendations, and the maintaining of 60 days of
20 continuous sobriety, as proven by a continuous alcohol monitoring
21 system.
- 22 (7) Any other factor that mitigates the seriousness of the offense.

23 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
24 mitigating factor shall occur during the same transaction or occurrence as the impaired
25 driving offense."

26 **SECTION 4.** G.S. 20-179(g) reads as rewritten:

27 "(g) Level One Punishment. – A defendant subject to Level One punishment may
28 be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of
29 imprisonment that includes a minimum term of not less than 30 days and a maximum
30 term of not more than 24 months. The term of imprisonment may be suspended only if a
31 condition of special probation is imposed to require the defendant to serve a term of
32 imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall
33 impose a requirement that the defendant obtain a substance abuse assessment and the
34 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license
35 and as a condition of probation. The judge may impose any other lawful condition of
36 probation. The judge may impose any other lawful condition of probation, such as
37 continuous alcohol monitoring."

38 **SECTION 5.** G.S. 20-179(h) reads as rewritten:

39 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
40 be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of
41 imprisonment that includes a minimum term of not less than seven days and a maximum
42 term of not more than 12 months. The term of imprisonment may be suspended only if a
43 condition of special probation is imposed to require the defendant to serve a term of
44 imprisonment of at least seven days. If the defendant is placed on probation, the judge

1 shall impose a requirement that the defendant obtain a substance abuse assessment and
2 the education or treatment required by G.S. 20-17.6 for the restoration of a drivers
3 license and as a condition of probation. The judge may impose any other lawful
4 condition of probation. The judge may impose any other lawful condition of probation,
5 such as continuous alcohol monitoring."

6 **SECTION 6.** G.S. 15A-1374(b) is amended by adding a new subdivision to
7 read:

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

- 10 (1) Work faithfully at suitable employment or faithfully pursue a course of
11 study or vocational training that will equip him for suitable
12 employment.
- 13 (2) Undergo available medical or psychiatric treatment and remain in a
14 specified institution if required for that purpose.
- 15 (3) Attend or reside in a facility providing rehabilitation, instruction,
16 recreation, or residence for persons on parole.
- 17 (4) Support his dependents and meet other family responsibilities.
- 18 (5) Refrain from possessing a firearm, destructive device, or other
19 dangerous weapon unless granted written permission by the
20 Commission or the parole officer.
- 21 (6) Report to a parole officer at reasonable times and in a reasonable
22 manner, as directed by the Commission or the parole officer.
- 23 (7) Permit the parole officer to visit him at reasonable times at his home or
24 elsewhere.
- 25 (8) Remain within the geographic limits fixed by the Commission unless
26 granted written permission to leave by the Commission or the parole
27 officer.
- 28 (8a) Remain in one or more specified places for a specified period or
29 periods each day and wear a device that permits the defendant's
30 compliance with the condition to be monitored electronically.
- 31 (8b) Remain alcohol free and wear a device that permits the defendant's
32 compliance with the condition to be monitored electronically.
- 33 (9) Answer all reasonable inquiries by the parole officer and obtain prior
34 approval from the parole officer for any change in address or
35 employment.
- 36 (10) Promptly notify the parole officer of any change in address or
37 employment.
- 38 (11) Submit at reasonable times to searches of his person by a parole officer
39 for purposes reasonably related to his parole supervision. The
40 Commission may not require as a condition of parole that the parolee
41 submit to any other searches that would otherwise be unlawful.
42 Whenever the search consists of testing for the presence of illegal
43 drugs, the parolee may also be required to reimburse the Department

- 1 of Correction for the actual cost of drug testing and drug screening, if
2 the results are positive.
- 3 (11a) Make restitution or reparation to an aggrieved party as provided in
4 G.S. 148-57.1.
- 5 (11b) Comply with an order from a court of competent jurisdiction regarding
6 the payment of an obligation of the parolee in connection with any
7 judgment rendered by the court.
- 8 (11c) In the case of a parolee who was attending a basic skills program
9 during incarceration, continue attending a basic skills program in
10 pursuit of a General Education Development Degree or adult high
11 school diploma.
- 12 (12) Satisfy other conditions reasonably related to his rehabilitation."
13 **SECTION 7.** This act becomes effective December 1, 2007, and applies to
14 offenses committed on or after that date.