

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1290**  
**Judiciary I (Civil) Committee Substitute Adopted 5/16/07**  
**Third Edition Engrossed 5/17/07**

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

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Sponsors:

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Referred to:

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March 26, 2007

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE USE OF CONTINUOUS ALCOHOL  
2 MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO  
3 HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY  
4 BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF  
5 RELEASE, PROBATION, OR PAROLE.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** G.S. 20-19(d)(2) reads as rewritten:

9 "(2) He is not currently an excessive user of ~~alcohol~~ alcohol, drugs, or  
10 prescription drugs, drugs, or unlawfully using any controlled  
11 substance."

12 **SECTION 1.(b)** G.S. 20-19(e) reads as rewritten:

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18 after it has been revoked for at least three years under this subsection if he provides the  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

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

25 (2) He is not currently an excessive user of ~~alcohol~~ alcohol, drugs, or  
26 prescription drugs, drugs, or unlawfully using any controlled substance.

1        The Division may conditionally restore the person's license after it has been revoked  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

4        (1) He has not consumed any alcohol for 12 months while being  
5 monitored by continuous alcohol monitoring device of a type approved  
6 by the Secretary of the Department of Correction. The Secretary shall  
7 not unreasonably withhold approval of a continuous alcohol  
8 monitoring system and shall consult with the Division of Purchase and  
9 Contract in the Department of Administration to ensure that potential  
10 vendors are not discriminated against.

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

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

17        (4) He is not unlawfully using any controlled substance.

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

20        **SECTION 2.** G.S. 20-179(e) reads as rewritten:

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

25        ...

26        (6a) Completion of a substance abuse assessment, compliance with its  
27 recommendations, and simultaneously maintaining 60 days of  
28 continuous abstinence from alcohol consumption, as proven by a  
29 continuous alcohol monitoring system. The continuous alcohol  
30 monitoring system shall be of a type approved by the Secretary of the  
31 Department of Correction. The Secretary shall not unreasonably  
32 withhold approval of a continuous alcohol monitoring system and shall  
33 consult with the Division of Purchase and Contract in the Department  
34 of Administration to ensure that potential vendors are not  
35 discriminated against.

36        (7) Any other factor that mitigates the seriousness of the offense.

37 Except for the factors in subdivisions (4), ~~(6)-(6)~~, (6a), and (7), the conduct constituting  
38 the mitigating factor shall occur during the same transaction or occurrence as the  
39 impaired driving offense."

40        **SECTION 3.** G.S. 20-179 is amended by adding a new subsection to read:

41        "(h1) The judge may impose, as a condition of probation for offenders subject to  
42 Level One or Level Two punishments, that the offender abstain from alcohol  
43 consumption for a minimum of 30 days, to a maximum of 60 days, as verified by a  
44 continuous alcohol monitoring system. The total cost for the continuous alcohol

1 monitoring system may not exceed one thousand dollars (\$1,000). The offender's  
2 abstinence from alcohol shall be verified by a continuous alcohol monitoring system of  
3 a type approved by the Secretary of the Department of Correction. The Secretary shall  
4 not unreasonably withhold approval of a continuous alcohol monitoring system and  
5 shall consult with the Division of Purchase and Contract in the Department of  
6 Administration to ensure that potential vendors are not discriminated against."

7 **SECTION 4.** G.S. 15A-1343 is amended by adding a new subsection to  
8 read:

9 "(b4) The court shall not impose, as a condition of probation pursuant to  
10 G.S. 20-179(h1), the use of a continuous alcohol monitoring system, unless:

- 11 (1) The court waives, upon good cause shown, an offender's payment of  
12 any costs associated with the system; and  
13 (2) The local governmental entity, responsible for the incarceration of the  
14 offender in the local confinement facility, agrees to pay the costs  
15 associated with the system due to the waiver."

16 **SECTION 5.** G.S. 15A-1374(b) is amended by adding a new subdivision to  
17 read:

18 "(8b) Remain alcohol free, and prove such abstinence through evaluation by  
19 a continuous alcohol monitoring system of a type approved by the  
20 Secretary of the Department of Correction. The Secretary shall not  
21 unreasonably withhold approval of a continuous alcohol monitoring  
22 system and shall consult with the Division of Purchase and Contract in  
23 the Department of Administration to ensure that potential vendors are  
24 not discriminated against."

25 **SECTION 6.** The Department of Correction shall establish regulations for  
26 continuous alcohol monitoring systems that are authorized for use by the courts as  
27 evidence that an offender on probation has abstained from the use of alcohol for a  
28 specified period of time. A "continuous alcohol monitoring system" is a device that is  
29 worn by a person that can detect, monitor, record, and report the amount of alcohol  
30 within the wearer's system over a continuous 24-hour daily basis. The regulations shall  
31 include the procedures for wearing of the monitoring device, supervision of the  
32 offender, collection and monitoring of the results, and the reporting to the judge  
33 ordering or accepting the use of the system as evidence of alcohol abstinence. The  
34 Secretary shall approve any continuous alcohol monitoring system prior to its use by a  
35 court as evidence of alcohol abstinence, or prior to ordering the use of a continuous  
36 alcohol monitoring system as a condition of probation. The Secretary shall not  
37 unreasonably withhold approval of a continuous alcohol monitoring system and shall  
38 consult with the Division of Purchase and Contract in the Department of Administration  
39 to ensure that potential vendors are not discriminated against.

40 **SECTION 7.** The Department of Correction shall issue a Request for  
41 Proposal for continuous alcohol monitoring equipment and monitoring services to  
42 develop a pilot program by the Division of Community Corrections' alcohol monitoring  
43 programs. The RFP shall require separate bids: one for equipment, maintenance, and  
44 technical support, and one for the aforementioned items plus monitoring services. The

1 Department shall design the RFP to use the most recent, cost-effective technology  
2 available; the Department shall not restrict vendors to the specifications of any  
3 equipment currently accepted by the courts as evidence of abstinence from alcohol by  
4 an offender. The Department shall also issue a separate RFP for continuous alcohol  
5 monitoring as an intermediate sanction. The RFP shall require separate bids: one for  
6 equipment, maintenance, and technical support, and one for the aforementioned items  
7 plus monitoring services. The RFPs shall be issued by January 1, 2008.

8 The Department of Correction shall report by March 1, 2008, to the Chairs of  
9 the House of Representatives and Senate Appropriations Committees and the Chairs of  
10 the House of Representatives and Senate Appropriations Subcommittees on Justice and  
11 Public Safety on the responses to the RFPs.

12 **SECTION 8.** The Department of Correction shall report to the Joint  
13 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by  
14 March 1, 2008, on the following:

- 15 (1) The Department's evaluation of continuous alcohol monitoring  
16 systems as evidence of an offender's abstinence from alcohol.
- 17 (2) The results of the Requests for Proposal issued in the 2007-2008 fiscal  
18 year for continuous alcohol monitoring of offenders supervised by the  
19 Division of Community Corrections.
- 20 (3) The Department's recommendations for implementing continuous  
21 alcohol monitoring, including:
  - 22 a. An evaluation of the costs and benefits of alcohol monitoring  
23 technology.
  - 24 b. The size and characteristics of the offender population and the  
25 proposed number of offenders to be monitored.
  - 26 c. The contractual and internal costs of the monitoring program.
  - 27 d. The proposed caseloads for probation officers who would  
28 supervise offenders using continuous alcohol monitoring  
29 technology.
  - 30 e. Whether the State should conduct a pilot program for  
31 continuous alcohol monitoring in limited jurisdictions or  
32 statewide.

33 The Department shall also explore funding options through grants and other  
34 sources, including the possibility of charging a fee to offenders to partially offset the  
35 costs of the program. The Department shall report to the Joint Legislative Corrections,  
36 Crime Control, and Juvenile Justice Oversight Committee on any funds identified.

37 **SECTION 9.** Sections 1 through 5 of this act become effective October 1,  
38 2007, and apply to offenses committed on or after that date. Nothing in this act shall be  
39 construed to prohibit a court from either continuing or allowing the use of continuous  
40 alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date  
41 of Sections 1 through 5. The remainder of this act is effective when it becomes law.