

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1087

Short Title: Continuous Alcohol Monitoring Systems. (Public)

Sponsors: Senators Snow; Allran, Atwater, Berger of Franklin, Berger of Rockingham, Kinnaird, McKissick, Nesbitt, Queen, and Weinstein.

Referred to: Judiciary II.

March 31, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS
3 AS A CONDITION OF PROBATION, TO MEET REQUIREMENTS FOR THE
4 RESTORATION OF A REVOKED DRIVERS LICENSE, TO MITIGATE
5 PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES, AND TO ENSURE
6 COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-534.1(a)(2) reads as rewritten:

9 "(2) A judge may impose the following conditions on pretrial release:

- 10 a. That the defendant stay away from the home, school, business or
11 place of employment of the alleged ~~victim~~; victim.
12 b. That the defendant refrain from assaulting, beating, molesting, or
13 wounding the alleged ~~victim~~; victim.
14 c. That the defendant refrain from removing, damaging or injuring
15 specifically identified ~~property~~; property.
16 d. That the defendant may visit his or her child or children at times and
17 places provided by the terms of any existing order entered by a
18 judge.
19 e. That the defendant abstain from alcohol consumption as verified by
20 the use of an approved continuous alcohol monitoring system.

21 The conditions set forth above may be imposed in addition to requiring that
22 the defendant execute a secured appearance bond."

23 **SECTION 2.** G.S. 15A-1340.11(6) reads as rewritten:

24 "(6) Intermediate punishment. – A sentence in a criminal case that places an
25 offender on supervised probation and includes at least one of the following
26 conditions:

- 27 a. Special probation as defined in G.S. 15A-1351(a).
28 b. Assignment to a residential program.
29 c. House arrest with electronic monitoring.
30 d. Intensive probation.
31 e. Assignment to a day-reporting center.
32 f. Assignment to a drug treatment court program.
33 g. Abstinence from alcohol consumption as verified by continuous
34 alcohol monitoring system approved by the Department of
35 Corrections."

36 **SECTION 3.** G.S. 15A-1543(b) reads as rewritten:



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

- 2 (1) Commit no criminal offense in any jurisdiction.
- 3 (2) Remain within the jurisdiction of the court unless granted written permission
4 to leave by the court or his probation officer.
- 5 (3) Report as directed by the court or his probation officer to the officer at
6 reasonable times and places and in a reasonable manner, permit the officer to
7 visit him at reasonable times, answer all reasonable inquiries by the officer
8 and obtain prior approval from the officer for, and notify the officer of, any
9 change in address or employment.
- 10 (4) Satisfy child support and other family obligations as required by the court. If
11 the court requires the payment of child support, the amount of the payments
12 shall be determined as provided in G.S. 50-13.4(c).
- 13 (5) Possess no firearm, explosive device or other deadly weapon listed in
14 G.S. 14-269 without the written permission of the court.
- 15 (6) Pay a supervision fee as specified in subsection (c1).
- 16 (7) Remain gainfully and suitably employed or faithfully pursue a course of
17 study or of vocational training that will equip him for suitable employment.
18 A defendant pursuing a course of study or of vocational training shall abide
19 by all of the rules of the institution providing the education or training, and
20 the probation officer shall forward a copy of the probation judgment to that
21 institution and request to be notified of any violations of institutional rules
22 by the defendant.
- 23 (8) Notify the probation officer if he fails to obtain or retain satisfactory
24 employment.
- 25 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
26 reparation as provided in subsection (d).
- 27 (10) Pay the State of North Carolina for the costs of appointed counsel, public
28 defender, or appellate defender to represent him in the case(s) for which he
29 was placed on probation.
- 30 (11) At a time to be designated by his probation officer, visit with his probation
31 officer a facility maintained by the Division of Prisons.
- 32 (12) Attend and complete an abuser treatment program if (i) the court finds the
33 defendant is responsible for acts of domestic violence and (ii) there is a
34 program, approved by the Domestic Violence Commission, reasonably
35 available to the defendant, unless the court finds that such would not be in
36 the best interests of justice.

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), and (11)."

4 **SECTION 4.** G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

5 "(b1) Special Conditions. – In addition to the regular conditions of probation specified in
6 subsection (b), the court may, as a condition of probation, require that during the probation the
7 defendant comply with one or more of the following special conditions:

8 ...

9 (2c) Submit to continuous alcohol monitoring when alcohol dependency or
10 chronic abuse has been identified by a substance abuse assessment, or have
11 two or more convictions for any alcohol related offense, including impaired
12 driving offenses.

13"

14 **SECTION 5.** G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

15 "(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding
16 judge specifically finds in the judgment of the court that delegation is not appropriate, the
17 Division of Community Corrections in the Department of Correction may require an offender
18 sentenced to intermediate punishment to:

- 19 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
20 law for this ~~supervision~~; supervision.
- 21 (2) Submit to a curfew which requires the offender to remain in a specified
22 place for a specified period each day and wear a device that permits the
23 offender's compliance with the condition to be monitored
24 ~~electronically~~; electronically.
- 25 (3) Submit to substance abuse assessment, monitoring or ~~treatment~~; or treatment,
26 including continuous alcohol monitoring when abstinence from alcohol
27 consumption has been specified as a term of probation.
- 28 (4) Participate in an educational or vocational skills development program.
- 29 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
30 Chapter 14 of the General Statutes, if the defendant is described by
31 G.S. 14-208.40(a)(2).

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

34 If the probation officer exercises authority delegated to him or her by the court pursuant to
35 this subsection, the offender may file a motion with the court to review the action taken by the
36 probation officer. The offender shall be given notice of the right to seek such a court review.
37 The Division may exercise any authority delegated to it under this subsection only if it first
38 determines that the offender has failed to comply with one or more of the conditions of
39 probation imposed by the court."

40 **SECTION 6.** G.S. 20-19(e1) reads as rewritten:

41 "(e1) Notwithstanding subsection (e) of this section, the Division may conditionally
42 restore the license of a person to whom subsection (e) applies after it has been revoked for at
43 least three years under subsection (e) if the person provides the Division with satisfactory proof
44 of all of the following:

- 45 (1) In the three years immediately preceding the person's application for a
46 restored license, the person has not been convicted in North Carolina or in
47 any other state or federal court of a motor vehicle offense, an alcohol
48 beverage control law offense, a drug law offense, or any criminal offense
49 involving the consumption of alcohol or drugs.
- 50 (2) The person is not currently an excessive user of alcohol, drugs, or
51 prescription drugs, or unlawfully using any controlled substance. The person

1 may voluntarily submit themselves to continuous alcohol monitoring for the
2 purpose of proving abstinence from alcohol consumption during the
3 revocation period. Monitoring periods of 120 days or longer shall be
4 accepted by the Division as evidence of abstinence. The person shall use a
5 continuous alcohol monitoring system approved by the Department of
6 Corrections."

7 **SECTION 7.** G.S. 20-19(e2) reads as rewritten:

8 "(e2) Notwithstanding subsection (e) of this section, the Division may conditionally
9 restore the license of a person to whom subsection (e) applies after it has been revoked for at
10 least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory
11 proof of all of the following:

- 12 (1) The person has not consumed any alcohol for the 12 months preceding the
13 restoration while being monitored by a continuous alcohol monitoring
14 device of a type approved by the Department of Correction.
- 15 (2) The person has not in the period of revocation been convicted in North
16 Carolina or any other state or federal jurisdiction of a motor vehicle offense,
17 an alcoholic beverage control law offense, a drug law offense, or any other
18 criminal offense involving the possession or consumption of alcohol or
19 drugs.
- 20 (3) The person is not currently an excessive user of alcohol, drugs or
21 prescription drugs. The person may voluntarily submit themselves to
22 continuous alcohol monitoring for the purpose of proving abstinence from
23 alcohol consumption during the revocation period. Monitoring periods of
24 120 days or longer shall be accepted by the Division as evidence of
25 abstinence. The person must use a continuous alcohol monitoring system
26 approved by the Department of Corrections.
- 27 (4) The person is not unlawfully using any controlled substance."

28 **SECTION 8.** G.S. 20-28(a) reads as rewritten:

29 "(a) Driving While License Revoked. – Except as provided in subsection (a1) of this
30 section, any person whose drivers license has been revoked who drives any motor vehicle upon
31 the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon
32 conviction, the person's license shall be revoked for an additional period of one year for the
33 first offense, two years for the second offense, and permanently for a third or subsequent
34 offense.

35 In cases involving revocation as a result of convictions under G.S. 20-138.1, the judge may
36 order the offender to abstain from alcohol consumption and verify compliance by continuous
37 alcohol monitoring for a minimum period of 90 days instead of incarceration.

38 The restoree of a revoked drivers license who operates a motor vehicle upon the highways
39 of the State without maintaining financial responsibility as provided by law shall be punished
40 as for driving without a license."

41 **SECTION 9.** G.S. 20-179 reads as rewritten:

42 "**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
43 **grossly aggravating and aggravating and mitigating factors; punishments.**

44 (a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1,
45 G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or
46 subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back
47 to district court after an appeal to superior court, the judge shall hold a sentencing hearing to
48 determine whether there are aggravating or mitigating factors that affect the sentence to be
49 imposed.

- 50 (1) The court shall consider evidence of aggravating or mitigating factors
51 present in the offense that make an aggravated or mitigated sentence

- 1 appropriate. The State bears the burden of proving beyond a reasonable
2 doubt that an aggravating factor exists, and the offender bears the burden of
3 proving by a preponderance of the evidence that a mitigating factor exists.
- 4 (2) Before the hearing the prosecutor shall make all feasible efforts to secure the
5 defendant's full record of traffic convictions, and shall present to the judge
6 that record for consideration in the hearing. Upon request of the defendant,
7 the prosecutor shall furnish the defendant or his attorney a copy of the
8 defendant's record of traffic convictions at a reasonable time prior to the
9 introduction of the record into evidence. In addition, the prosecutor shall
10 present all other appropriate grossly aggravating and aggravating factors of
11 which he is aware, and the defendant or his attorney may present all
12 appropriate mitigating factors. In every instance in which a valid chemical
13 analysis is made of the defendant, the prosecutor shall present evidence of
14 the resulting alcohol concentration.
- 15 (a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –
- 16 (1) Notice. – If the defendant appeals to superior court, and the State intends to
17 use one or more aggravating factors under subsections (c) or (d) of this
18 section, the State must provide the defendant with notice of its intent. The
19 notice shall be provided no later than 10 days prior to trial and shall contain
20 a plain and concise factual statement indicating the factor or factors it
21 intends to use under the authority of subsections (c) and (d) of this section.
22 The notice must list all the aggravating factors that the State seeks to
23 establish.
- 24 (2) Aggravating factors. – The defendant may admit to the existence of an
25 aggravating factor, and the factor so admitted shall be treated as though it
26 were found by a jury pursuant to the procedures in this section. If the
27 defendant does not so admit, only a jury may determine if an aggravating
28 factor is present. The jury impaneled for the trial may, in the same trial, also
29 determine if one or more aggravating factors is present, unless the court
30 determines that the interests of justice require that a separate sentencing
31 proceeding be used to make that determination. If the court determines that a
32 separate proceeding is required, the proceeding shall be conducted by the
33 trial judge before the trial jury as soon as practicable after the guilty verdict
34 is returned. The State bears the burden of proving beyond a reasonable doubt
35 that an aggravating factor exists, and the offender bears the burden of
36 proving by a preponderance of the evidence that a mitigating factor exists.
- 37 (3) Convening the jury. – If prior to the time that the trial jury begins its
38 deliberations on the issue of whether one or more aggravating factors exist,
39 any juror dies, becomes incapacitated or disqualified, or is discharged for
40 any reason, an alternate juror shall become a part of the jury and serve in all
41 respects as those selected on the regular trial panel. An alternate juror shall
42 become a part of the jury in the order in which the juror was selected. If the
43 trial jury is unable to reconvene for a hearing on the issue of whether one or
44 more aggravating factors exist after having determined the guilt of the
45 accused, the trial judge shall impanel a new jury to determine the issue.
- 46 (4) Jury selection. – A jury selected to determine whether one or more
47 aggravating factors exist shall be selected in the same manner as juries are
48 selected for the trial of criminal cases.
- 49 (a2) Jury Trial on Aggravating Factors in Superior Court.
- 50 (1) Defendant admits aggravating factor only. – If the defendant admits that an
51 aggravating factor exists, but pleads not guilty to the underlying charge, a

1 jury shall be impaneled to dispose of the charge only. In that case, evidence
2 that relates solely to the establishment of an aggravating factor shall not be
3 admitted in the trial.

- 4 (2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty
5 to the charge, but contests the existence of one or more aggravating factors,
6 a jury shall be impaneled to determine if the aggravating factor or factors
7 exist.

8 (b) Repealed by Session Laws 1983, c. 435, s. 29.

9 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing,
10 based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior
11 court, must first determine whether there are any grossly aggravating factors in the case.
12 Whether a prior conviction exists under subdivision (1) of this subsection, or whether a
13 conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by
14 the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case
15 remanded back to district court from superior court, the judge shall determine whether the
16 defendant has been convicted of any offense that was not considered at the initial sentencing
17 hearing and impose the appropriate sentence under this section. The judge must impose the
18 Level One punishment under subsection (g) of this section if it is determined that two or more
19 grossly aggravating factors apply. The judge must impose the Level Two punishment under
20 subsection (h) of this section if it is determined that only one of the grossly aggravating factors
21 applies. The grossly aggravating factors are:

- 22 (1) A prior conviction for an offense involving impaired driving if:
23 a. The conviction occurred within seven years before the date of the
24 offense for which the defendant is being sentenced; or
25 b. The conviction occurs after the date of the offense for which the
26 defendant is presently being sentenced, but prior to or
27 contemporaneously with the present sentencing; or
28 c. The conviction occurred in district court; the case was appealed to
29 superior court; the appeal has been withdrawn, or the case has been
30 remanded back to district court; and a new sentencing hearing has
31 not been held pursuant to G.S. 20-38.7.

32 Each prior conviction is a separate grossly aggravating factor.

- 33 (2) Driving by the defendant at the time of the offense while his driver's license
34 was revoked under G.S. 20-28, and the revocation was an impaired driving
35 revocation under G.S. 20-28.2(a).
36 (3) Serious injury to another person caused by the defendant's impaired driving
37 at the time of the offense.
38 (4) Driving by the defendant while a child under the age of 16 years was in the
39 vehicle at the time of the offense.

40 In imposing a Level One or Two punishment, the judge may consider the aggravating and
41 mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there
42 are no grossly aggravating factors in the case, the judge must weigh all aggravating and
43 mitigating factors and impose punishment as required by subsection (f).

44 (c1) Written Findings. – The court shall make findings of the aggravating and mitigating
45 factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that
46 those findings are entered in the court's determination of sentencing factors form or any
47 comparable document used to record the findings of sentencing factors. Findings shall be in
48 writing.

49 (d) Aggravating Factors to Be Weighed. – The judge, or the jury in superior court, shall
50 determine before sentencing under subsection (f) whether any of the aggravating factors listed

1 below apply to the defendant. The judge shall weigh the seriousness of each aggravating factor
2 in the light of the particular circumstances of the case. The factors are:

- 3 (1) Gross impairment of the defendant's faculties while driving or an alcohol
4 concentration of 0.15 or more within a relevant time after the driving. For
5 purposes of this subdivision, the results of a chemical analysis presented at
6 trial or sentencing shall be sufficient to prove the person's alcohol
7 concentration, shall be conclusive, and shall not be subject to modification
8 by any party, with or without approval by the court.
- 9 (2) Especially reckless or dangerous driving.
- 10 (3) Negligent driving that led to a reportable accident.
- 11 (4) Driving by the defendant while his driver's license was revoked.
- 12 (5) Two or more prior convictions of a motor vehicle offense not involving
13 impaired driving for which at least three points are assigned under
14 G.S. 20-16 or for which the convicted person's license is subject to
15 revocation, if the convictions occurred within five years of the date of the
16 offense for which the defendant is being sentenced, or one or more prior
17 convictions of an offense involving impaired driving that occurred more than
18 seven years before the date of the offense for which the defendant is being
19 sentenced.
- 20 (6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing
21 or attempting to elude apprehension.
- 22 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30
23 miles per hour over the legal limit.
- 24 (8) Passing a stopped school bus in violation of G.S. 20-217.
- 25 (9) Any other factor that aggravates the seriousness of the offense.

26 Except for the factor in subdivision (5) the conduct constituting the aggravating factor shall
27 occur during the same transaction or occurrence as the impaired driving offense.

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

- 32 (1) Slight impairment of the defendant's faculties resulting solely from alcohol,
33 and an alcohol concentration that did not exceed 0.09 at any relevant time
34 after the driving.
- 35 (2) Slight impairment of the defendant's faculties, resulting solely from alcohol,
36 with no chemical analysis having been available to the defendant.
- 37 (3) Driving at the time of the offense that was safe and lawful except for the
38 impairment of the defendant's faculties.
- 39 (4) A safe driving record, with the defendant's having no conviction for any
40 motor vehicle offense for which at least four points are assigned under
41 G.S. 20-16 or for which the person's license is subject to revocation within
42 five years of the date of the offense for which the defendant is being
43 sentenced.
- 44 (5) Impairment of the defendant's faculties caused primarily by a lawfully
45 prescribed drug for an existing medical condition, and the amount of the
46 drug taken was within the prescribed dosage.
- 47 (6) The defendant's voluntary submission to a mental health facility for
48 assessment after he was charged with the impaired driving offense for which
49 he is being sentenced, and, if recommended by the facility, his voluntary
50 participation in the recommended treatment.

1 (6a) Completion of a substance abuse assessment, compliance with its
2 recommendations, and simultaneously maintaining 60 days of continuous
3 abstinence from alcohol consumption, as proven by a continuous alcohol
4 monitoring system. The continuous alcohol monitoring system shall be of a
5 type approved by the Department of Correction.

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

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

10 (f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the
11 sentencing hearing determines that there are no grossly aggravating factors, the judge shall
12 weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge
13 determines that:

14 (1) The aggravating factors substantially outweigh any mitigating factors, the
15 judge shall note in the judgment the factors found and his finding that the
16 defendant is subject to the Level Three punishment and impose a
17 punishment within the limits defined in subsection (i).

18 (2) There are no aggravating and mitigating factors, or that aggravating factors
19 are substantially counterbalanced by mitigating factors, the judge shall note
20 in the judgment any factors found and the finding that the defendant is
21 subject to the Level Four punishment and impose a punishment within the
22 limits defined in subsection (j).

23 (3) The mitigating factors substantially outweigh any aggravating factors, the
24 judge shall note in the judgment the factors found and his finding that the
25 defendant is subject to the Level Five punishment and impose a punishment
26 within the limits defined in subsection (k).

27 It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug
28 addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be
29 received in the sentencing hearing, however, for use by the judge in formulating terms and
30 conditions of sentence after determining which punishment level shall be imposed.

31 (f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this
32 section, a person convicted of impaired driving under G.S. 20-138.1 under the common law
33 concept of aiding and abetting is subject to Level Five punishment. The judge need not make
34 any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

35 (f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in
36 each charge of impaired driving for which there is a conviction the judge shall determine if the
37 sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired
38 driving charge is consolidated with a charge carrying a greater punishment. Two or more
39 impaired driving charges may not be consolidated for judgment.

40 (g) Level One Punishment. – A defendant subject to Level One punishment may be
41 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
42 that includes a minimum term of not less than 30 days and a maximum term of not more than
43 24 months. The term of imprisonment may be suspended only if a condition of special
44 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
45 ~~days.~~ days or if the defendant has abstained from consuming alcohol for at least 180
46 consecutive days, as verified by a continuous alcohol monitoring system approved by the
47 Department of Corrections. If the defendant is placed on probation, the judge shall impose a
48 requirement that the defendant obtain a substance abuse assessment and the education or
49 treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of
50 probation. The judge may impose any other lawful condition of probation.

1 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be
2 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
3 includes a minimum term of not less than seven days and a maximum term of not more than 12
4 months. The term of imprisonment may be suspended only if a condition of special probation is
5 imposed to require the defendant to serve a term of imprisonment of at least seven ~~days.~~ days or
6 if the defendant has abstained from consuming alcohol for at least 90 consecutive days, as
7 verified by a continuous alcohol monitoring system approved by the Department of
8 Corrections. If the defendant is placed on probation, the judge shall impose a requirement that
9 the defendant obtain a substance abuse assessment and the education or treatment required by
10 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
11 may impose any other lawful condition of probation.

12 ~~(h1) The judge may impose, as a condition of probation for defendants subject to Level~~
13 ~~One or Level Two punishments, that the defendant abstain from alcohol consumption for a~~
14 ~~minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring~~
15 ~~system. The total cost to the defendant for the continuous alcohol monitoring system may not~~
16 ~~exceed one thousand dollars (\$1,000). The defendant's abstinence from alcohol shall be verified~~
17 ~~by a continuous alcohol monitoring system of a type approved by the Department of~~
18 ~~Correction.~~

19 ~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
20 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
21 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
22 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
23 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

24 ~~(h3) Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be~~
25 ~~paid to the clerk of court for the county in which the judgment was entered or the deferred~~
26 ~~prosecution agreement was filed. Fees or costs collected under this subsection shall be~~
27 ~~transmitted to the entity providing the continuous alcohol monitoring system.~~

28 (i) Level Three Punishment. – A defendant subject to Level Three punishment may be
29 fined up to one thousand dollars (\$1,000) and shall be sentenced to a term of imprisonment that
30 includes a minimum term of not less than 72 hours and a maximum term of not more than six
31 months. The term of imprisonment may be suspended. However, the suspended sentence shall
32 include the condition that the defendant:

- 33 (1) Be imprisoned for a term of at least 72 hours as a condition of special
34 probation; or
- 35 (2) Perform community service for a term of at least 72 hours; or
- 36 (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and
37 applicable to offenses committed on or after that date.
- 38 (4) Any combination of these conditions.

39 If the defendant is placed on probation, the judge shall impose a requirement that the
40 defendant obtain a substance abuse assessment and the education or treatment required by
41 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
42 may impose any other lawful condition of probation.

43 (j) Level Four Punishment. – A defendant subject to Level Four punishment may be
44 fined up to five hundred dollars (\$500.00) and shall be sentenced to a term of imprisonment
45 that includes a minimum term of not less than 48 hours and a maximum term of not more than
46 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall
47 include the condition that the defendant:

- 48 (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- 49 (2) Perform community service for a term of 48 hours; or
- 50 (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and
51 applicable to offenses committed on or after that date.

1 (4) Any combination of these conditions.

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

6 (k) Level Five Punishment. – A defendant subject to Level Five punishment may be
7 fined up to two hundred dollars (\$200.00) and shall be sentenced to a term of imprisonment
8 that includes a minimum term of not less than 24 hours and a maximum term of not more than
9 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall
10 include the condition that the defendant:

11 (1) Be imprisoned for a term of 24 hours as a condition of special probation; or

12 (2) Perform community service for a term of 24 hours; or

13 (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and
14 applicable to offenses committed on or after that date.

15 (4) Any combination of these conditions.

16 If the defendant is placed on probation, the judge shall impose a requirement that the
17 defendant obtain a substance abuse assessment and the education or treatment required by
18 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
19 may impose any other lawful condition of probation.

20 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order
21 that a term of imprisonment imposed as a condition of special probation under any level of
22 punishment be served as an inpatient in a facility operated or licensed by the State for the
23 treatment of alcoholism or substance abuse where the defendant has been accepted for
24 admission or commitment as an inpatient. The defendant shall bear the expense of any
25 treatment unless the trial judge orders that the costs be absorbed by the State. The judge may
26 impose restrictions on the defendant's ability to leave the premises of the treatment facility and
27 require that the defendant follow the rules of the treatment facility. The judge may credit
28 against the active sentence imposed on a defendant the time the defendant was an inpatient at
29 the treatment facility, provided such treatment occurred after the commission of the offense for
30 which the defendant is being sentenced. This section shall not be construed to limit the
31 authority of the judge in sentencing under any other provisions of law.

32 (k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol
33 Monitoring. – The judge may order that as a condition of special probation for any level of
34 offense under G.S. 20-179 that the defendant abstain from alcohol consumption as verified by a
35 continuous alcohol monitoring system of a type approved by the Department of Corrections.

36 (k3) Probation officers may require defendants to submit to continuous alcohol
37 monitoring for assessment purposes if the defendant has been required to abstain from alcohol
38 consumption during the term of probation and the probation officer believes the defendant is
39 consuming alcohol.

40 (k4) Notwithstanding the provisions of subsection (g), (h), (k2), and (k3), if the court
41 finds, upon good cause shown, that the defendant should not be required to pay the costs of the
42 continuous alcohol monitoring system, the court shall not impose the use of a continuous
43 alcohol monitoring system unless the local governmental entity responsible for the
44 incarceration of the defendant in the local confinement facility agrees to pay the costs of the
45 system.

46 (l) Repealed by Session Laws 1989, c. 691.

47 (m) Repealed by Session Laws 1995, c. 496, s. 2.

48 (n) Time Limits for Performance of Community Service. – If the judgment requires the
49 defendant to perform a specified number of hours of community service as provided in
50 subsections (i), (j), or (k), the community service shall be completed:

- 1 (1) Within 90 days, if the amount of community service required is 72 hours or
2 more; or
3 (2) Within 60 days, if the amount of community service required is 48 hours; or
4 (3) Within 30 days, if the amount of community service required is 24 hours.

5 The court may extend these time limits upon motion of the defendant if it finds that the
6 defendant has made a good faith effort to comply with the time limits specified in this
7 subsection.

8 (o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the
9 State shall prove any grossly aggravating or aggravating factor beyond a reasonable doubt, and
10 the defendant shall prove any mitigating factor by the greater weight of the evidence. Evidence
11 adduced by either party at trial may be utilized in the sentencing hearing. Except as modified
12 by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any
13 evidence as to the presence or absence of previous convictions that he finds reliable but he shall
14 give prima facie effect to convictions recorded by the Division or any other agency of the State
15 of North Carolina. A copy of such conviction records transmitted by the police information
16 network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in
17 evidence without further authentication. If the judge decides to impose an active sentence of
18 imprisonment that would not have been imposed but for a prior conviction of an offense, the
19 judge shall afford the defendant an opportunity to introduce evidence that the prior conviction
20 had been obtained in a case in which he was indigent, had no counsel, and had not waived his
21 right to counsel. If the defendant proves by the preponderance of the evidence all three above
22 facts concerning the prior case, the conviction may not be used as a grossly aggravating or
23 aggravating factor.

24 (p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed
25 under this section:

- 26 (1) The judge may not give credit to the defendant for the first 24 hours of time
27 spent in incarceration pending trial.
28 (2) The defendant shall serve the mandatory minimum period of imprisonment
29 and good or gain time credit may not be used to reduce that mandatory
30 minimum period.
31 (3) The defendant may not be released on parole unless he is otherwise eligible,
32 has served the mandatory minimum period of imprisonment, and has
33 obtained a substance abuse assessment and completed any recommended
34 treatment or training program.

35 With respect to the minimum or specific term of imprisonment imposed as a condition of
36 special probation under this section, the judge may not give credit to the defendant for the first
37 24 hours of time spent in incarceration pending trial.

38 (q) Repealed by Session Laws 1991, c. 726, s. 20.

39 (r) Supervised Probation Terminated. – Unless a judge in his discretion determines that
40 supervised probation is necessary, and includes in the record that he has received evidence and
41 finds as a fact that supervised probation is necessary, and states in his judgment that supervised
42 probation is necessary, a defendant convicted of an offense of impaired driving shall be placed
43 on unsupervised probation if he meets three conditions. These conditions are that he has not
44 been convicted of an offense of impaired driving within the seven years preceding the date of
45 this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j),
46 and (k) of this section, and has obtained any necessary substance abuse assessment and
47 completed any recommended treatment or training program.

48 When a judge determines in accordance with the above procedures that a defendant should
49 be placed on supervised probation, the judge shall authorize the probation officer to modify the
50 defendant's probation by placing the defendant on unsupervised probation upon the completion
51 by the defendant of the following conditions of his suspended sentence:

- 1 (1) Community service; or
- 2 (2) Repealed by Session Laws 1995 c. 496, s. 2.
- 3 (3) Payment of any fines, court costs, and fees; or
- 4 (4) Any combination of these conditions.

5 (s) Method of Serving Sentence. – The judge in his discretion may order a term of
6 imprisonment to be served on weekends, even if the sentence cannot be served in consecutive
7 sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours
8 or more remaining on a term of imprisonment, the defendant shall be required to serve 48
9 continuous hours of imprisonment to be given credit for time served.

- 10 (1) Credit for any jail time shall only be given hour for hour for time actually
11 served. The jail shall maintain a log showing number of hours served.
- 12 (2) The defendant shall be refused entrance and shall be reported back to court if
13 the defendant appears at the jail and has remaining in his body any alcohol
14 as shown by an alcohol screening device or controlled substance previously
15 consumed, unless lawfully obtained and taken in therapeutically appropriate
16 amounts.
- 17 (3) If a defendant has been reported back to court under subdivision (2) of this
18 subsection, the court shall hold a hearing. The defendant shall be ordered to
19 serve his jail time immediately and shall not be eligible to serve jail time on
20 weekends if the court determines that, at the time of his entrance to the jail,
 - 21 a. The defendant had previously consumed alcohol in his body as
22 shown by an alcohol screening device, or
 - 23 b. The defendant had a previously consumed controlled substance in his
24 body.

25 It shall be a defense to an immediate service of sentence of jail time and
26 ineligibility for weekend service of jail time if the court determines that
27 alcohol or controlled substance was lawfully obtained and was taken in
28 therapeutically appropriate amounts.

- 29 (t) Repealed by Session Laws 1995, c. 496, s. 2."

30 **SECTION 10.** G.S. 50-13.2 is amended by adding a new subsection to read:

31 "(b2) Any order for custody, including visitation, may as a condition of such custody or
32 visitation require either or both parents, or any other person seeking custody or visitation, to
33 abstain from consuming alcohol and may require submission to an approved continuous alcohol
34 monitoring system to verify compliance with this condition of custody or visitation. Failure to
35 comply with this condition shall be grounds for civil or criminal contempt."

36 **SECTION 11.** This act becomes effective December 1, 2009, and applies to
37 offenses committed or any custody and visitation orders issued on or after that date.