

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 713
Committee Substitute Favorable 5/10/89

Short Title: Probation Extension Notification.

(Public)

Sponsors:

Referred to:

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NOTIFICATION TO DEFENDANT THAT PROBATION PERIOD MAY BE EXTENDED IF RESTITUTION IS NOT COMPLETED AND TO PERMIT AN OFFENDER WHO HAS VIOLATED A CONDITION OF PROBATION REQUIRING RESTITUTION TO CONFESS TO A JUDGMENT IN THE AMOUNT DUE AT THE EXPIRATION OF THE PROBATIONARY PERIOD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1342(a) reads as rewritten:

"(a) Period.—The court may place a convicted offender on probation for a maximum of five years. The court may place a defendant as to whom prosecution has been deferred on probation for a maximum of two years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

At the time the court places the convicted offender on probation, the court shall notify the defendant that his probation may be extended for up to three years beyond the maximum period of five years of probation, supervised or unsupervised to allow the defendant to complete his restitution obligation or

~~The court with the consent of the defendant may extend the period of probation beyond five years (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. The period of extension shall not exceed three~~

1 ~~years beyond the original period of probation.~~ The special extension authorized herein
2 may be ordered only in the last six months of the probation term."

3 Sec. 2. G.S. 15A-1351(a) reads as rewritten:

4 "(a) The judge may sentence a defendant convicted of an offense for which the
5 maximum penalty does not exceed 10 years to special probation. Under a sentence of
6 special probation, the court may suspend the term of imprisonment and place the
7 defendant on probation as provided in Article 82, Probation, and in addition require that
8 the defendant submit to a period or periods of imprisonment in the custody of the
9 Department of Correction or a designated local confinement or treatment facility at
10 whatever time or intervals within the period of probation, consecutive or
11 nonconsecutive, the court determines. In addition to any other conditions of probation
12 which the court may impose, the court shall impose, when imposing a period or periods
13 of imprisonment as a condition of special probation, the condition that the defendant
14 obey the Rules and Regulations of the Department of Correction governing conduct of
15 inmates, and this condition shall apply to the defendant whether or not the court
16 imposes it as a part of the written order. If imprisonment is for continuous periods, the
17 confinement may be in the custody of either the Department of Correction or a local
18 confinement facility. Noncontinuous periods of imprisonment under special probation
19 may only be served in a designated local confinement or treatment facility. The total of
20 all periods of confinement imposed as an incident of special probation, but not including
21 an activated suspended sentence, may not exceed six months or one fourth the
22 maximum penalty allowed by law for the offense, whichever is less, and no
23 confinement other than an activated suspended sentence may be required beyond two
24 years of conviction. In imposing a sentence of special probation, the judge may credit
25 any time spent committed or confined, as a result of the charge, to either the suspended
26 sentence or to the imprisonment required for special probation. The period of
27 probation, including the period of imprisonment required for special probation, may not
28 exceed ~~five years.~~years, except as provided by G.S. 15A-1342(a). The court may
29 revoke, modify, or terminate special probation as otherwise provided for probationary
30 sentences."

31 Sec. 3. G.S. 15A-1344 is amended by adding a new subsection to read:

32 "(e1) Confession of Judgment in Response to Violation. - When a defendant has
33 completed the original period of probation under G.S. 15A-1342(a) or G.S. 15A-
34 1351(a), or any period of extension beyond the original period, and has violated a
35 condition of such probation requiring restitution, as defined in G.S. 1343(d), a defendant
36 may offer a confession of judgment for money due or for money that may become due
37 under the restitution conditions that were imposed. The court is not required to accept
38 such offer of a confession of judgment, and nothing in this subsection shall be construed
39 to limit any judge authorized under G.S. 15A-1344(a) who enters such confession of
40 judgment from also responding to a violation in a manner otherwise authorized under
41 this section. Any confession of judgment entered shall in no way abridge the right of
42 any aggrieved party, as defined in G.S. 15A-1343(d), to bring a civil action against the
43 defendant for money damages arising out of the offense or offenses committed by the
44 defendant, but any amount paid by the defendant under the terms of a judgment as

1 provided herein shall be credited against any judgment rendered against the defendant in
2 such civil action.

3 (1) Procedure. – A defendant desiring to confess judgment shall file with
4 the court a statement in writing signed and verified or sworn to by such
5 defendant authorizing the entry of judgment for the amount stated.
6 The statement shall refer to the order placing the defendant on
7 probation, the name of the defendant, his county of residence, and
8 shall concisely show why the defendant is in violation of the condition
9 of his probation requiring restitution. The statement shall show the
10 name and county of residence of the aggrieved party. If the aggrieved
11 party is not a natural person, for the purposes of this rule its county of
12 residence shall be considered to be the county in which it has its
13 principal place of business, whether in this State or not.

14 (2) Where entered. – Judgment by confession shall be entered in the
15 county where the defendant resides or has real property or in the
16 county where the aggrieved party resides but the entry of judgment in
17 any county shall be conclusive evidence that this subsection has been
18 complied with.

19 (3) Form of entry. – When a statement in conformity with this subsection
20 is filed and the court enters judgment for the amount confessed, the
21 clerk shall docket the judgment as in other cases, with costs, together
22 with disbursements. The statement, with the judgment, shall become
23 the judgment roll.

24 (4) Force and effect. – Judgments entered in conformity with this
25 subsection shall have the same effect as other judgments except that no
26 judgment by confession shall be held to be **res judicata** as to any fact
27 in any civil action except in an action on the judgment confessed.
28 Upon being docketed, the judgment becomes a lien on real estate of
29 the defendant in the same manner as do judgments in civil actions.
30 Executions may be issued and enforced in the same manner as upon
31 other judgments. When the full amount of the judgment is not all due,
32 or is payable in installments, and the installments are not all due,
33 execution may issue upon such judgment for the collection of such
34 sums as have become due and shall be in usual form. Notwithstanding
35 the issue and satisfaction of such execution, the judgment remains as
36 security for the sums thereafter to become due; and whenever any
37 further sum becomes due, execution may in like manner be issued."

38 Sec. 4. This act shall become effective October 1, 1989, and shall apply to
39 persons placed on probation on or after that date.