

**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
House Committee Substitute Favorable 6/13/07**

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

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW EARLIER CONDITIONAL RESTORATION OF A DRIVERS
3 LICENSE IN CERTAIN CIRCUMSTANCES, AND TO PROVIDE FOR THE USE
4 OF CONTINUOUS ALCOHOL MONITORING SYSTEMS TO BE USED TO
5 MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI
6 CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE
7 COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR
8 PAROLE.

9 The General Assembly of North Carolina enacts:

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

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

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

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20 after it has been revoked for at least three years under this subsection if he provides the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

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

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

3 The Division may conditionally restore the person's license after it has been revoked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

- 6 (1) He has not consumed any alcohol for the 12 months preceding the
7 restoration while being monitored by a continuous alcohol monitoring
8 device of a type approved by the Department of Correction.

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

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

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

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

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

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

23 ...

- 24 (6a) Completion of a substance abuse assessment, compliance with its
25 recommendations, and simultaneously maintaining 60 days of
26 continuous abstinence from alcohol consumption, as proven by a
27 continuous alcohol monitoring system. The continuous alcohol
28 monitoring system shall be of a type approved by the Department of
29 Correction.

- 30 (7) Any other factor that mitigates the seriousness of the offense. Except
31 for the factors in subdivisions (4), ~~(6)–(6)~~, (6a), and (7), the conduct
32 constituting the mitigating factor shall occur during the same
33 transaction or occurrence as the impaired driving offense."

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

35 "(h1) The judge may impose, as a condition of probation for defendants subject to
36 Level One or Level Two punishments, that the defendant abstain from alcohol
37 consumption for a minimum of 30 days, to a maximum of 60 days, as verified by a
38 continuous alcohol monitoring system. The total cost to the defendant for the
39 continuous alcohol monitoring system may not exceed one thousand dollars (\$1,000).
40 The defendant's abstinence from alcohol shall be verified by a continuous alcohol
41 monitoring system of a type approved by the Department of Correction.

42 (h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon
43 good cause shown, that the defendant should not be required to pay the costs of the
44 continuous alcohol monitoring system, the court shall not impose the use of a

1 continuous alcohol monitoring system unless the local governmental entity responsible
2 for the incarceration of the defendant in the local confinement facility agrees to pay the
3 costs of the system.

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

9 **SECTION 4.** G.S. 15A-1374(b) is amended by adding a new subdivision to
10 read:

11 "(8b) Remain alcohol free, and prove such abstinence through evaluation by
12 a continuous alcohol monitoring system of a type approved by the
13 Department of Correction."

14 **SECTION 5.** G.S. 15A-1374 is amended by adding a new subsection to
15 read:

16 "(d) Any fees or costs paid by the parolee in order to comply with the imposition
17 of subdivision (8b) of subsection (b) of this section shall be paid to the clerk of court for
18 the county in which the parolee was convicted. Fees or costs collected under this
19 subsection shall be transmitted to the entity providing the continuous alcohol
20 monitoring system."

21 **SECTION 6.** The Department of Correction shall establish regulations for
22 continuous alcohol monitoring systems that are authorized for use by the courts as
23 evidence that an offender on probation has abstained from the use of alcohol for a
24 specified period of time. A "continuous alcohol monitoring system" is a device that is
25 worn by a person that can detect, monitor, record, and report the amount of alcohol
26 within the wearer's system over a continuous 24-hour daily basis. The regulations shall
27 include the procedures for supervision of the offender, collection and monitoring of the
28 results, and the transmission of the data to the court for consideration by the court. All
29 courts, including those using continuous alcohol monitoring systems prior to the
30 effective date of this Act, shall comply with the regulations established by the
31 Department pursuant to this section.

32 The Secretary, or the Secretary's designee, shall approve continuous alcohol
33 monitoring systems for use by the courts prior to their use by a court as evidence of
34 alcohol abstinence, or their use as a condition of probation. The Secretary shall not
35 unreasonably withhold approval of a continuous alcohol monitoring system and shall
36 consult with the Division of Purchase and Contract in the Department of Administration
37 to ensure that potential vendors are not discriminated against.

38 **SECTION 7.** The Department of Correction shall issue Requests for
39 Information for continuous alcohol monitoring equipment and monitoring services to
40 consider the development of pilot programs for the use of alcohol monitoring systems
41 for offenders supervised by the Division of Community Corrections as an intermediate
42 punishment pursuant to Article 81B of Chapter 15A of the General Statutes or as a
43 condition of probation. The RFIs shall require separate submissions as follows:

44 (1) For use as an intermediate punishment:

- 1 a. One submission for equipment, maintenance, and technical
- 2 support.
- 3 b. One submission for equipment, maintenance, technical support,
- 4 and monitoring services.
- 5 (2) For use as a condition of probation:
- 6 a. One submission for equipment, maintenance, and technical
- 7 support.
- 8 b. One submission for equipment, maintenance, technical support,
- 9 and monitoring services.

10 The Department shall design the RFIs to use the most recent, cost-effective
11 technology available; the Department shall not restrict vendors to the specifications of
12 any equipment currently used by the courts as evidence of abstinence from alcohol by
13 an offender. The RFIs shall be issued by January 1, 2008.

14 **SECTION 8.** The Department of Correction shall report to the Chairs of the
15 House of Representatives and Senate Appropriations Committees, the Chairs of the
16 House of Representatives and Senate Appropriations Subcommittees on Justice and
17 Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice
18 Oversight Committee by October 1, 2008, on the following:

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

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

41 **SECTION 9.** Sections 1 through 5 of this act become effective December 1,
42 2007, and apply to offenses committed on or after that date. Nothing in this act shall be
43 construed to prohibit a court from either continuing or allowing the use of continuous

- 1 alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date
- 2 of Sections 1 through 5. The remainder of this act is effective when it becomes law.