

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-165
SENATE BILL 1290**

AN ACT TO ALLOW EARLIER CONDITIONAL RESTORATION OF A DRIVERS LICENSE IN CERTAIN CIRCUMSTANCES, AND TO PROVIDE FOR THE USE OF CONTINUOUS 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.(a) G.S. 20-19(d)(2) reads as rewritten:

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

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

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 The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

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

The Division may conditionally restore the person's license after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

- (1) He has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Department of Correction.
- (2) 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.
- (3) He is not currently an excessive user of drugs or prescription drugs.
- (4) He is not unlawfully using any controlled substance.

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

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

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

- ...
(6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. The continuous alcohol monitoring system shall be of a type approved by the Department of Correction.
- (7) Any other factor that mitigates the seriousness of the offense. Except for the factors in subdivisions (4), ~~(6)-(6)~~, (6a), and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

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

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

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

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

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

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

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

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

SECTION 6. The Department of Correction shall establish regulations for continuous alcohol monitoring systems that are authorized for use by the courts as evidence that an offender on probation has abstained from the use of alcohol for a specified period of time. A "continuous alcohol monitoring system" is a device that is worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer's system over a continuous 24-hour daily basis. The regulations shall include the procedures for supervision of the offender, collection and monitoring of the results, and the transmission of the data to the court for consideration by the court. All courts, including those using continuous alcohol monitoring systems prior to the

effective date of this Act, shall comply with the regulations established by the Department pursuant to this section.

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

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

- (1) For use as an intermediate punishment:
 - a. One submission for equipment, maintenance, and technical support.
 - b. One submission for equipment, maintenance, technical support, and monitoring services.
- (2) For use as a condition of probation:
 - a. One submission for equipment, maintenance, and technical support.
 - b. One submission for equipment, maintenance, technical support, and monitoring services.

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

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

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

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

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

In the General Assembly read three times and ratified this the 25th day of June, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:02 a.m. this 4th day of July, 2007