

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1400*

Short Title: Amend Special Probation Definition.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary I.

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF SPECIAL PROBATION TO REMOVE
THE SIX-MONTH LIMITATION ON THE PERIOD OF IMPRISONMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344(e) reads as rewritten:

"(e) Special Probation in Response to Violation. – When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed ~~six months or~~ one fourth the maximum sentence of imprisonment imposed for the ~~offense, whichever is less.~~ offense. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first."

1 **SECTION 2.** G.S. 15A-1351(a) reads as rewritten:

2 "(a) The judge may sentence to special probation a defendant convicted of a
3 criminal offense other than impaired driving under G.S. 20-138.1, if based on the
4 defendant's prior record or conviction level as found pursuant to Article 81B of this
5 Chapter, an intermediate punishment is authorized for the class of offense of which the
6 defendant has been convicted. A defendant convicted of impaired driving under G.S.
7 20-138.1 may also be sentenced to special probation. Under a sentence of special
8 probation, the court may suspend the term of imprisonment and place the defendant on
9 probation as provided in Article 82, Probation, and in addition require that the defendant
10 submit to a period or periods of imprisonment in the custody of the Department of
11 Correction or a designated local confinement or treatment facility at whatever time or
12 intervals within the period of probation, consecutive or nonconsecutive, the court
13 determines. In addition to any other conditions of probation which the court may
14 impose, the court shall impose, when imposing a period or periods of imprisonment as a
15 condition of special probation, the condition that the defendant obey the Rules and
16 Regulations of the Department of Correction governing conduct of inmates, and this
17 condition shall apply to the defendant whether or not the court imposes it as a part of the
18 written order. If imprisonment is for continuous periods, the confinement may be in the
19 custody of either the Department of Correction or a local confinement facility.
20 Noncontinuous periods of imprisonment under special probation may only be served in
21 a designated local confinement or treatment facility. Except for probationary sentences
22 of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed
23 as an incident of special probation, but not including an activated suspended sentence,
24 may not exceed ~~six months~~ or one fourth the maximum sentence of imprisonment
25 imposed for the offense, ~~whichever is less~~, and no confinement other than an activated
26 suspended sentence may be required beyond two years of conviction. For probationary
27 sentences for impaired driving under G.S. 20-138.1, the total of all periods of
28 confinement imposed as an incident of special probation, but not including an activated
29 suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law.
30 In imposing a sentence of special probation, the judge may credit any time spent
31 committed or confined, as a result of the charge, to either the suspended sentence or to
32 the imprisonment required for special probation. The original period of probation,
33 including the period of imprisonment required for special probation, shall be as
34 specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except
35 as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special
36 probation as otherwise provided for probationary sentences."

37 **SECTION 3.** This act becomes effective December 1, 2002, and applies to
38 offenses committed on or after that date.