

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 1290
Judiciary I (Civil) Committee Substitute Adopted 5/16/07

Short Title: Alcohol Monitoring Systems for DWI Offenders.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE USE OF CONTINUOUS ALCOHOL
2 MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO
3 HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY
4 BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF
5 RELEASE, PROBATION, OR PAROLE.
6

7 The General Assembly of North Carolina enacts:

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

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

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

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18 after it has been revoked for at least three years under this subsection if he provides the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

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

27 The Division may conditionally restore the person's license after it has been revoked
28 for at least 12 months under G.S. 20-17(a)(2) if the person provides the Division with
29 satisfactory proof that:

1 (1) He has not consumed any alcohol for 12 months while being
2 monitored by continuous alcohol monitoring device of a type approved
3 by the Secretary of the Department of Correction. The Secretary shall
4 not unreasonably withhold approval of a continuous alcohol
5 monitoring system and shall consult with the Division of Purchase and
6 Contract in the Department of Administration to ensure that potential
7 vendors are not discriminated against.

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

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

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

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

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

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

22 ...

23 (6a) Completion of a substance abuse assessment, compliance with its
24 recommendations, and simultaneously maintaining 60 days of
25 continuous abstinence from alcohol consumption, as proven by a
26 continuous alcohol monitoring system. The continuous alcohol
27 monitoring system shall be of a type approved by the Secretary of the
28 Department of Correction. The Secretary shall not unreasonably
29 withhold approval of a continuous alcohol monitoring system and shall
30 consult with the Division of Purchase and Contract in the Department
31 of Administration to ensure that potential vendors are not
32 discriminated against.

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

34 Except for the factors in subdivisions (4), ~~(6)-(6)~~, (6a), and (7), the conduct constituting
35 the mitigating factor shall occur during the same transaction or occurrence as the
36 impaired driving offense."

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

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

1 not unreasonably withhold approval of a continuous alcohol monitoring system and
2 shall consult with the Division of Purchase and Contract in the Department of
3 Administration to ensure that potential vendors are not discriminated against."

4 **SECTION 4.** G.S. 15A-1343 is amended by adding a new subsection to
5 read:

6 "(b4) The court shall not impose, as a condition of probation pursuant to
7 G.S. 20-179(h1), the use of a continuous alcohol monitoring system, unless:

8 (1) The court waives, upon good cause shown, an offender's payment of
9 any costs associated with the system; and

10 (2) The local governmental entity, responsible for the incarceration of the
11 offender in the local confinement facility, agrees to pay the costs
12 associated with the system due to the waiver."

13 **SECTION 5.** G.S. 15A-1374(b) is amended by adding a new subdivision to
14 read:

15 "(8b) Remain alcohol free, and prove such abstinence through evaluation by
16 a continuous alcohol monitoring system of a type approved by the
17 Secretary of the Department of Correction. The Secretary shall not
18 unreasonably withhold approval of a continuous alcohol monitoring
19 system and shall consult with the Division of Purchase and Contract in
20 the Department of Administration to ensure that potential vendors are
21 not discriminated against."

22 **SECTION 6.** The Department of Correction shall establish regulations for
23 continuous alcohol monitoring systems that are authorized for use by the courts as
24 evidence that an offender on probation has abstained from the use of alcohol for a
25 specified period of time. A "continuous alcohol monitoring system" is a device that is
26 worn by a person that can detect, monitor, record, and report the amount of alcohol
27 within the wearer's system over a continuous 24-hour daily basis. The regulations shall
28 include the procedures for wearing of the monitoring device, supervision of the
29 offender, collection and monitoring of the results, and the reporting to the judge
30 ordering or accepting the use of the system as evidence of alcohol abstinence. The
31 Secretary shall approve any continuous alcohol monitoring system prior to its use by a
32 court as evidence of alcohol abstinence, or prior to ordering the use of a continuous
33 alcohol monitoring system as a condition of probation. The Secretary shall not
34 unreasonably withhold approval of a continuous alcohol monitoring system and shall
35 consult with the Division of Purchase and Contract in the Department of Administration
36 to ensure that potential vendors are not discriminated against.

37 **SECTION 7.** The Department of Correction shall issue a Request for
38 Proposal for continuous alcohol monitoring equipment and monitoring services to
39 develop a pilot program by the Division of Community Corrections' alcohol monitoring
40 programs. The RFP shall require separate bids: one for equipment, maintenance, and
41 technical support, and one for the aforementioned items plus monitoring services. The
42 Department shall design the RFP to use the most recent, cost-effective technology
43 available; the Department shall not restrict vendors to the specifications of any
44 equipment currently accepted by the courts as evidence of abstinence from alcohol by

1 an offender. The Department shall also issue a separate RFP for continuous alcohol
2 monitoring as an intermediate sanction. The RFP shall require separate bids: one for
3 equipment, maintenance, and technical support, and one for the aforementioned items
4 plus monitoring services. The RFPs shall be issued by January 1, 2008.

5 The Department of Correction shall report by March 1, 2008, to the Chairs of
6 the House of Representatives and Senate Appropriations Committees and the Chairs of
7 the House of Representatives and Senate Appropriations Subcommittees on Justice and
8 Public Safety on the responses to the RFPs.

9 **SECTION 8.** The Department of Correction shall report to the Joint
10 Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by
11 March 1, 2008, on the following:

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

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

34 **SECTION 9.** Sections 1 through 5 of this act become effective October 1,
35 2007, and apply to offenses committed on or after that date. Nothing in this act shall be
36 construed to prohibit a court from either continuing or allowing the use of continuous
37 alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date
38 of Sections 1 through 5. The remainder of this act is effective when it becomes law.