

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 713  
Committee Substitute Favorable 5/10/89  
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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~~

1 ordered as a condition of the probation. ~~The period of extension shall not exceed three~~  
2 ~~years beyond the original period of probation.~~ The special extension authorized herein  
3 may be ordered only in the last six months of the probation term."

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

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

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

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

1 committed by the defendant, but any amount paid by the defendant under the terms of a  
2 judgment as provided herein shall be credited against any judgment rendered against the  
3 defendant in such civil action.

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

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

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

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

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