

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS55024-LL-32 (2/13)

Short Title: Amend Special Probation Definition.

(Public)

Sponsors: Senator Gulley.

Referred to:

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~~ 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

1 other than an activated suspended sentence may be required beyond the period of
2 probation or beyond two years of the time the special probation is imposed, whichever
3 comes first."

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

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

40 **SECTION 3.** This act becomes effective December 1, 2003, and applies to
41 offenses committed on or after that date.