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Senate Judiciary II (Criminal) Committee Substitute No. 2 Committee Substitute
Adopted 6/25/08

Short Title: Probation Violation Changes.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S
3 PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE
4 WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR
5 POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR AND TO
6 PROVIDE THAT A COURT MAY EXTEND OR MODIFY.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-1340.16(d) is amended by adding a new subdivision
9 to read:

10 "(12a) The defendant has, during the 10-year period prior to the commission
11 of the offense for which the defendant is being sentenced, been found
12 by a court of this State to be in willful violation of the conditions of
13 probation imposed pursuant to a suspended sentence or been found by
14 the Post-Release Supervision and Parole Commission to be in willful
15 violation of a condition of parole or post-release supervision imposed
16 pursuant to release from incarceration."

17 **SECTION 2.** G.S. 15A-1340.16(b) reads as rewritten:

18 "(b) When Aggravated or Mitigated Sentence Allowed. – If the jury, or with
19 respect to an aggravating factor under
20 ~~G.S. 15A-1340.16(d)(18a)~~, G.S. 15A-1340.16(d)(12a) or (18a), the court, finds that
21 aggravating factors exist or the court finds that mitigating factors exist, the court may
22 depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If
23 aggravating factors are present and the court determines they are sufficient to outweigh
24 any mitigating factors that are present, it may impose a sentence that is permitted by the
25 aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating
26 factors are present and are sufficient to outweigh any aggravating factors that are

1 present, it may impose a sentence that is permitted by the mitigated range described in
2 G.S. 15A-1340.17(c)(3)."

3 **SECTION 3.** G.S. 15A-1342(a) reads as rewritten:

4 "(a) Period. – The court may place a convicted offender on probation for the
5 appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five
6 years. The court may place a defendant as to whom prosecution has been deferred on
7 probation for a maximum of two years. The probation remains conditional and subject
8 to revocation during the period of probation imposed, unless terminated as provided in
9 subsection (b) or G.S. 15A-1341(c).

10 Extension. – ~~The~~In addition to G.S. 15A-1344, the court with the consent of the
11 defendant may extend the period of probation beyond the original period (i) for the
12 purpose of allowing the defendant to complete a program of restitution, or (ii) to allow
13 the defendant to continue medical or psychiatric treatment ordered as a condition of the
14 probation. The period of extension shall not exceed three years beyond the original
15 period of probation. The special extension authorized herein may be ordered only in the
16 last six months of the original period of probation. Any probationary judgment form
17 provided to a defendant on supervised probation shall state that probation may be
18 extended pursuant to this subsection."

19 **SECTION 4.** G.S. 15A-1344 reads as rewritten:

20 "**§ 15A-1344. Response to violations; alteration and revocation.**

21 (a) Authority to Alter or Revoke. – Except as provided in subsection (b),
22 probation may be reduced, terminated, continued, extended, modified, or revoked by
23 any judge entitled to sit in the court which imposed probation and who is resident or
24 presiding in the district court district as defined in G.S. 7A-133 or superior court district
25 or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of
26 probation was imposed, where the probationer violates probation, or where the
27 probationer resides. Upon a finding that an offender sentenced to community
28 punishment under Article 81B has violated one or more conditions of probation, the
29 court's authority to modify the probation judgment includes the authority to require the
30 offender to comply with conditions of probation that would otherwise make the
31 sentence an intermediate punishment. The district attorney of the prosecutorial district
32 as defined in G.S. 7A-60 in which probation was imposed must be given reasonable
33 notice of any hearing to affect probation substantially.

34 (b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. – If the
35 sentencing judge has entered an order to limit jurisdiction to consider a sentence of
36 unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation
37 may be reduced, terminated, continued, extended, modified, or revoked only by the
38 sentencing judge or, if the sentencing judge is no longer on the bench, by a presiding
39 judge in the court where the defendant was sentenced.

40 (c) Procedure on Altering or Revoking Probation; Returning Probationer to
41 District Where Sentenced. – When a judge reduces, terminates, extends, modifies, or
42 revokes probation outside the county where the judgment was entered, the clerk must
43 send a copy of the order and any other records to the court where probation was
44 originally imposed. A court on its own motion may return the probationer to the district

1 court district as defined in G.S. 7A-133 or superior court district or set of districts as
2 defined in G.S. 7A-41.1, as the case may be, where probation was imposed or where the
3 probationer resides for reduction, termination, continuation, extension, modification, or
4 revocation of probation. In cases where the probation is revoked in a county other than
5 the county of original conviction the clerk in that county must issue a commitment order
6 and must file the order revoking probation and the commitment order, which will
7 constitute sufficient permanent record of the proceeding in that court, and must send a
8 certified copy of the order revoking probation, the commitment order, and all other
9 records pertaining thereto to the county of original conviction to be filed with the
10 original records. The clerk in the county other than the county of original conviction
11 must issue the formal commitment to the North Carolina Department of Correction.

12 (d) Extension and Modification; Response to Violations. – At any time prior to
13 the expiration or termination of the probation ~~period, period or in accordance with~~
14 subsection (f) of this section, the court may after notice and hearing and for good cause
15 shown extend the period of probation up to the maximum allowed under
16 G.S. 15A-1342(a) and may modify the conditions of probation. The probation period
17 shall be tolled if the probationer shall have pending against him criminal charges in any
18 court of competent jurisdiction, which, upon conviction, could result in revocation
19 proceedings against him for violation of the terms of this probation. The hearing may be
20 held in the absence of the defendant, if he fails to appear for the hearing after a
21 reasonable effort to notify him. If a convicted defendant violates a condition of
22 probation at any time prior to the expiration or termination of the period of probation,
23 the court, in accordance with the provisions of G.S. 15A-1345, may continue him on
24 probation, with or without modifying the conditions, may place the defendant on special
25 probation as provided in subsection (e), or, if continuation, modification, or special
26 probation is not appropriate, may revoke the probation and activate the suspended
27 sentence imposed at the time of initial sentencing, if any, or may order that charges as to
28 which prosecution has been deferred be brought to trial; provided that probation may
29 not be revoked solely for conviction of a Class 3 misdemeanor. The court, before
30 activating a sentence to imprisonment established when the defendant was placed on
31 probation, may reduce the sentence, but the reduction shall be consistent with
32 subsection (d1) of this section. A sentence activated upon revocation of probation
33 commences on the day probation is revoked and runs concurrently with any other period
34 of probation, parole, or imprisonment to which the defendant is subject during that
35 period unless the revoking judge specifies that it is to run consecutively with the other
36 period.

37 (d1) Reduction of Initial Sentence. – If the court elects to reduce the sentence of
38 imprisonment for a felony, it shall not deviate from the range of minimum durations
39 established in Article 81B of this Chapter for the class of offense and prior record level
40 used in determining the initial sentence. If the presumptive range is used for the initial
41 suspended sentence, the reduced sentence shall be within the presumptive range. If the
42 mitigated range is used for the initial suspended sentence, the reduced sentence shall be
43 within the mitigated range. If the aggravated range is used for the initial suspended
44 sentence, the reduced sentence shall be within the aggravated range. If the court elects

1 to reduce the sentence for a misdemeanor, it shall not deviate from the range of
2 durations established in Article 81B for the class of offense and prior conviction level
3 used in determining the initial sentence.

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

28 (e1) Criminal Contempt in Response to Violation. – If a defendant willfully
29 violates a condition of probation, the court may hold the defendant in criminal contempt
30 as provided in Article 1 of Chapter 5A of the General Statutes. A finding of criminal
31 contempt by the court shall not revoke the probation. If the offender serves a sentence
32 for contempt in a local confinement facility, the Department of Correction shall pay for
33 the confinement at the standard rate set by the General Assembly pursuant to
34 G.S. 148-32.1(a) regardless of whether the offender would be eligible under the terms of
35 that subsection.

36 (e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation
37 in Response to Violation by Certain Sex Offenders. – If a defendant who is in the
38 category described by G.S. 14-208.40(a)(1) or G.S. 14-208.40(a)(2) violates probation
39 and if the court extends the probation as a result of the violation, then the court shall
40 order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the
41 General Statutes as a condition of the extended probation.

42 (f) Extension, Modification, or Revocation after Period of Probation. – The court
43 may extend, modify, or revoke probation after the expiration of the period of probation
44 if all of the following apply:

- 1 (1) Before the expiration of the period of probation the State has filed a
2 written ~~motion-violation report~~ with the clerk indicating its intent to
3 conduct a ~~revocation hearing; and~~ hearing on one or more violations of
4 one or more conditions of probation.
- 5 (2) The court finds that the ~~State has made reasonable effort to notify the~~
6 ~~probationer and to conduct the hearing earlier.~~ probationer did violate
7 one or more conditions of probation prior to the expiration period of
8 probation.
- 9 (3) The court finds for good cause shown and stated that the probation
10 should be extended, modified, or revoked.
- 11 (4) If the court opts to extend the period of probation, the court may
12 extend the period of probation up to the maximum allowed under
13 G.S. 15A-1342(a)."

14 **SECTION 5.** Sections 1 and 2 of this act become effective December 1,
15 2008, and apply to offenses committed on or after that date. Sections 3 and 4 of this act
16 become effective December 1, 2008, and apply to probation violation hearings on or
17 after that date. The remainder of this act becomes effective December 1, 2008.