

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 1408\***

Short Title: Alcohol Monitoring Systems for DWI Offenders. (Public)

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Sponsors: Representatives Alexander, Barnhart, Walend (Primary Sponsors); and Faison.

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Referred to: Judiciary I.

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April 12, 2007

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR THE USE OF ALCOHOL MONITORING SYSTEMS  
TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED  
FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO  
ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION,  
OR PAROLE.

The General Assembly of North Carolina enacts:

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

"(d) When a person's license is revoked under G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if he provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle

1                    offense, an alcoholic beverage control law offense, or a drug law  
2                    offense, or any other criminal offense involving the possession or  
3                    consumption of alcohol or drugs.

4                    (3) He is also not currently an excessive user of prescription drugs.

5 If the Division restores the person's license, it may place reasonable conditions or  
6 restrictions on the person for the duration of the original revocation period."

7                    **SECTION 2.** G.S. 20-19(e) reads as rewritten:

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

15                    (1) In the three years immediately preceding the person's application for a  
16 restored license, he has not been convicted in North Carolina or in any  
17 other state or federal court of a motor vehicle offense, an alcohol  
18 beverage control law offense, a drug law offense, or any criminal  
19 offense involving the consumption of alcohol or drugs; and

20                    (2) He is not currently an excessive user of alcohol or prescription drugs.

21                    The Division may conditionally restore the person's license after it has been revoked  
22 for at least 18 months under G.S. 20-17(a)(2) if the person provides the Division with  
23 satisfactory proof that:

24                    (1) He has not consumed any alcohol for 18 months while being  
25 monitored by continuous alcohol monitoring devices.

26                    (2) He has not in the period of revocation been convicted in North  
27 Carolina or any other state or federal jurisdiction of a motor vehicle  
28 offense, an alcoholic beverage control law offense, a drug law offense,  
29 or any other criminal offense involving the possession or consumption  
30 of alcohol or drugs.

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

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

34                    **SECTION 3.** G.S. 20-179(e) reads as rewritten:

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

39                    (1) Slight impairment of the defendant's faculties resulting solely from  
40 alcohol, and an alcohol concentration that did not exceed 0.09 at any  
41 relevant time after the driving.

42                    (2) Slight impairment of the defendant's faculties, resulting solely from  
43 alcohol, with no chemical analysis having been available to the  
44 defendant.

- 1 (3) Driving at the time of the offense that was safe and lawful except for  
2 the impairment of the defendant's faculties.
- 3 (4) A safe driving record, with the defendant's having no conviction for  
4 any motor vehicle offense for which at least four points are assigned  
5 under G.S. 20-16 or for which the person's license is subject to  
6 revocation within five years of the date of the offense for which the  
7 defendant is being sentenced.
- 8 (5) Impairment of the defendant's faculties caused primarily by a lawfully  
9 prescribed drug for an existing medical condition, and the amount of  
10 the drug taken was within the prescribed dosage.
- 11 (6) The defendant's voluntary submission to a mental health facility for  
12 assessment after he was charged with the impaired driving offense for  
13 which he is being sentenced, and, if recommended by the facility, his  
14 voluntary participation in the recommended treatment.
- 15 (6a) Completion of a mandated substance abuse assessment, compliance  
16 with its recommendations, and the maintaining of 60 days of  
17 continuous sobriety, as proven by a continuous alcohol monitoring  
18 system.
- 19 (7) Any other factor that mitigates the seriousness of the offense.
- 20 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the  
21 mitigating factor shall occur during the same transaction or occurrence as the impaired  
22 driving offense."

23 **SECTION 4.** G.S. 20-179(g) reads as rewritten:

24 "(g) Level One Punishment. – A defendant subject to Level One punishment may  
25 be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of  
26 imprisonment that includes a minimum term of not less than 30 days and a maximum  
27 term of not more than 24 months. The term of imprisonment may be suspended only if a  
28 condition of special probation is imposed to require the defendant to serve a term of  
29 imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall  
30 impose a requirement that the defendant obtain a substance abuse assessment and the  
31 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license  
32 and as a condition of probation. The judge may impose any other lawful condition of  
33 probation. The judge may impose any other lawful condition of probation, such as  
34 continuous alcohol monitoring."

35 **SECTION 5.** G.S. 20-179(h) reads as rewritten:

36 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may  
37 be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of  
38 imprisonment that includes a minimum term of not less than seven days and a maximum  
39 term of not more than 12 months. The term of imprisonment may be suspended only if a  
40 condition of special probation is imposed to require the defendant to serve a term of  
41 imprisonment of at least seven days. If the defendant is placed on probation, the judge  
42 shall impose a requirement that the defendant obtain a substance abuse assessment and  
43 the education or treatment required by G.S. 20-17.6 for the restoration of a drivers  
44 license and as a condition of probation. The judge may impose any other lawful

1 condition of probation. The judge may impose any other lawful condition of probation,  
2 such as continuous alcohol monitoring."

3 **SECTION 6.** G.S. 15A-1374(b) is amended by adding a new subdivision to  
4 read:

5 "(b) Appropriate Conditions. – As conditions of parole, the Commission may  
6 require that the parolee comply with one or more of the following conditions:

- 7 (1) Work faithfully at suitable employment or faithfully pursue a course of  
8 study or vocational training that will equip him for suitable  
9 employment.
- 10 (2) Undergo available medical or psychiatric treatment and remain in a  
11 specified institution if required for that purpose.
- 12 (3) Attend or reside in a facility providing rehabilitation, instruction,  
13 recreation, or residence for persons on parole.
- 14 (4) Support his dependents and meet other family responsibilities.
- 15 (5) Refrain from possessing a firearm, destructive device, or other  
16 dangerous weapon unless granted written permission by the  
17 Commission or the parole officer.
- 18 (6) Report to a parole officer at reasonable times and in a reasonable  
19 manner, as directed by the Commission or the parole officer.
- 20 (7) Permit the parole officer to visit him at reasonable times at his home or  
21 elsewhere.
- 22 (8) Remain within the geographic limits fixed by the Commission unless  
23 granted written permission to leave by the Commission or the parole  
24 officer.
- 25 (8a) Remain in one or more specified places for a specified period or  
26 periods each day and wear a device that permits the defendant's  
27 compliance with the condition to be monitored electronically.
- 28 (8b) Remain alcohol free and wear a device that permits the defendant's  
29 compliance with the condition to be monitored electronically.
- 30 (9) Answer all reasonable inquiries by the parole officer and obtain prior  
31 approval from the parole officer for any change in address or  
32 employment.
- 33 (10) Promptly notify the parole officer of any change in address or  
34 employment.
- 35 (11) Submit at reasonable times to searches of his person by a parole officer  
36 for purposes reasonably related to his parole supervision. The  
37 Commission may not require as a condition of parole that the parolee  
38 submit to any other searches that would otherwise be unlawful.  
39 Whenever the search consists of testing for the presence of illegal  
40 drugs, the parolee may also be required to reimburse the Department  
41 of Correction for the actual cost of drug testing and drug screening, if  
42 the results are positive.
- 43 (11a) Make restitution or reparation to an aggrieved party as provided in  
44 G.S. 148-57.1.

- 1           (11b) Comply with an order from a court of competent jurisdiction regarding  
2           the payment of an obligation of the parolee in connection with any  
3           judgment rendered by the court.
- 4           (11c) In the case of a parolee who was attending a basic skills program  
5           during incarceration, continue attending a basic skills program in  
6           pursuit of a General Education Development Degree or adult high  
7           school diploma.
- 8           (12) Satisfy other conditions reasonably related to his rehabilitation."
- 9           **SECTION 7.** This act becomes effective December 1, 2007, and applies to  
10          offenses committed on or after that date.