

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1393*

Short Title: Clarify Intermediate Punishments.

(Public)

Sponsors: Representatives Justus; and Baddour.

Referred to: Judiciary I.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CONDITIONS OF PROBATION FOR INTERMEDIATE PUNISHMENTS UNDER STRUCTURED SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.11 reads as rewritten:

"§ 15A-1340.11. Definitions.

The following definitions apply in this Article:

(1) Active punishment. – A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. – A sentence in a criminal case that does not include an active punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this section.

(3) Day-reporting center. – A facility to which ~~offenders are~~ an offender sentenced to intermediate punishment is required, as a condition of probation, to report on a daily ~~or other regular basis at specified times~~ for a specified length of ~~time~~ time from a minimum of 90 days to a maximum of 180 days. An offender who is unemployed shall be required to remain at the day-reporting center for a minimum period of three hours

1 per day. An offender who is employed or a full-time student shall be
2 required to remain at the facility for at least one hour per day. An
3 offender assigned to a day-reporting center is to be engaged in
4 habilitation programs conducted at the facility, and may be ordered to
5 participate in activities such as ~~counseling, treatment, social skills training,~~
6 ~~or employment training.~~ work, substance abuse treatment, social skills
7 training, education, employment or employment training conducted at
8 the facility or at other specified locations. After the initial reporting
9 period, the offender shall remain under probation supervision and shall
10 continue to report as specified to complete treatment conditions and
11 habilitation programs. The offender shall be required to adhere to a
12 daily program regime and a curfew.

13 (4) Repealed by Session Laws 1997-57, s. 2.

14 (4a) House arrest with electronic monitoring. – Probation in which the
15 offender is required to remain at his or her residence unless the court or
16 the probation officer authorizes the offender to leave for the purpose of
17 employment, counseling, a course of study, or vocational training. The
18 offender shall be required to wear a device which permits the
19 supervising agency to monitor the offender's compliance with the
20 condition electronically.

21 (5) Intensive probation. – Probation that requires the offender to submit to
22 supervision by officers assigned to the Intensive Supervision Program
23 established pursuant to G.S. 143B-262(c), and to comply with the rules
24 adopted for that Program. Unless otherwise ordered by the court,
25 intensive supervision also requires multiple contacts by a probation
26 officer per week, a specific period each day during which the offender
27 must be at his or her residence, and that the offender remain gainfully
28 and suitably employed or faithfully pursue a course of study or of
29 vocational training that will equip the offender for suitable employment.

30 (6) Intermediate punishment. – A sentence in a criminal case that places an
31 offender on supervised probation and includes at least one of the
32 following conditions:

- 33 a. Special probation as defined in G.S. 15A-1351(a).
- 34 b. Assignment to a residential program.
- 35 c. House arrest with electronic monitoring.
- 36 d. Intensive probation.
- 37 e. Assignment to a day-reporting center.

38 In addition, a sentence to regular supervised probation imposed pursuant
39 to a community penalties plan as defined in G.S. 7A-771(2) is an
40 intermediate punishment, regardless of whether any of the above
41 conditions is imposed, if the plan is accepted by the court and the plan
42 does not include active punishment.

- 1 (7) Prior conviction. – A person has a prior conviction when, on the date a
2 criminal judgment is entered, the person being sentenced has been
3 previously convicted of a crime:
4 a. In the district court, and the person has not given notice of appeal
5 and the time for appeal has expired; or
6 b. In the superior court, regardless of whether the conviction is on
7 appeal to the appellate division; or
8 c. In the courts of the United States, another state, the armed
9 services of the United States, or another country, regardless of
10 whether the offense would be a crime if it occurred in North
11 Carolina,
12 regardless of whether the crime was committed before or after the
13 effective date of this Article.
- 14 (8) Residential program. – A program in which ~~the offender,~~ an offender
15 sentenced to intermediate punishment, as a condition of probation, is
16 required to reside in a specified facility for a specified period and length
17 of time. The length of time so specified shall be not less than 30 days
18 nor more than two years. An offender in a residential program shall be
19 engaged in recommended habilitation programs conducted at the facility
20 or other locations, and shall abide by the rules and regulations of the
21 residential program and probationary supervision. The offender may be
22 ordered to participate in activities such as ~~counseling,~~ work, substance
23 abuse treatment, social skills training, employment or employment
24 training, conducted at the residential facility or at other specified
25 locations."

26 Section 2. G.S. 15A-1343(b1)(2a) reads as rewritten:

27 "(2a) Submit to a period of confinement in a facility operated by the Department of
28 Correction for a minimum of 90 days or a maximum of 120 days ~~under special probation,~~
29 ~~reference G.S. 15A-1351(a) or G.S. 15A-1344(e),~~ and abide by all rules and regulations as
30 provided in conjunction with the Intensive Motivational Program of Alternative
31 Correctional Treatment (IMPACT), which provides an atmosphere for learning personal
32 confidence, personal responsibility, self-respect, and respect for attitudes and value
33 systems. This condition may also include a period of supervision through the Post-Boot
34 Camp Probation Program."

35 Section 3. G.S. 15A-1344(e) reads as rewritten:

36 "(e) Special Probation in Response to Violation. – When a defendant has violated a
37 condition of probation, the court may modify his probation to place him on special
38 probation as provided in this subsection. In placing him on special probation, the court
39 may continue or modify the conditions of his probation and in addition require that he
40 submit to a period or periods of imprisonment, either continuous or noncontinuous, at
41 whatever time or intervals within the period of probation the court determines. In addition
42 to any other conditions of probation which the court may impose, the court shall impose,
43 when imposing a period or periods of imprisonment as a condition of special probation,

1 the condition that the defendant obey the Rules and Regulations of the Department of
2 Correction governing conduct of inmates, and this condition shall apply to the defendant
3 whether or not the court imposes it as a part of the written order. If imprisonment is for
4 continuous periods, the confinement may be in either the custody of the Department of
5 Correction or a local confinement facility. Noncontinuous periods of imprisonment under
6 special probation may only be served in a designated local confinement or treatment
7 facility. Except for probationary sentences for impaired driving under G.S. 20-138.1 and
8 ~~probationary sentences which include a period of imprisonment in the Intensive Motivational~~
9 ~~Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), G.S.~~
10 20-138.1, the total of all periods of confinement imposed as an incident of special
11 probation, but not including an activated suspended sentence, may not exceed six months
12 or one fourth the maximum sentence of imprisonment imposed for the offense, whichever
13 is less. For probationary sentences for impaired driving under G.S. 20-138.1, the total of
14 all periods of confinement imposed as an incident of special probation, but not including
15 an activated suspended sentence, shall not exceed one-fourth the maximum penalty
16 allowed by law. ~~For probationary sentences which include a period of imprisonment in the~~
17 ~~Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S.~~
18 ~~15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special~~
19 ~~probation, but not including an activated suspended sentence, shall not exceed six months or one-~~
20 ~~half the maximum term of the suspended sentence of imprisonment, whichever is less.—No~~
21 confinement other than an activated suspended sentence may be required beyond the
22 period of probation or beyond two years of the time the special probation is imposed,
23 whichever comes first."

24 Section 4. G.S. 15A-1351(a) reads as rewritten:

25 "(a) The judge may sentence to special probation a defendant convicted of a
26 criminal offense other than impaired driving under G.S. 20-138.1, if based on the
27 defendant's prior record or conviction level as found pursuant to Article 81B of this
28 Chapter, an intermediate punishment is authorized for the class of offense of which the
29 defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-
30 138.1 may also be sentenced to special probation. Under a sentence of special probation,
31 the court may suspend the term of imprisonment and place the defendant on probation as
32 provided in Article 82, Probation, and in addition require that the defendant submit to a
33 period or periods of imprisonment in the custody of the Department of Correction or a
34 designated local confinement or treatment facility at whatever time or intervals within the
35 period of probation, consecutive or nonconsecutive, the court determines. In addition to
36 any other conditions of probation which the court may impose, the court shall impose,
37 when imposing a period or periods of imprisonment as a condition of special probation,
38 the condition that the defendant obey the Rules and Regulations of the Department of
39 Correction governing conduct of inmates, and this condition shall apply to the defendant
40 whether or not the court imposes it as a part of the written order. If imprisonment is for
41 continuous periods, the confinement may be in the custody of either the Department of
42 Correction or a local confinement facility. Noncontinuous periods of imprisonment under
43 special probation may only be served in a designated local confinement or treatment

1 facility. Except for probationary sentences of impaired driving under G.S. 20-138.1 and
2 probationary sentences which include a period of imprisonment in the Intensive Motivational
3 Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), G.S.
4 20-138.1, the total of all periods of confinement imposed as an incident of special
5 probation, but not including an activated suspended sentence, may not exceed six months
6 or one fourth the maximum sentence of imprisonment imposed for the offense, whichever
7 is less, and no confinement other than an activated suspended sentence may be required
8 beyond two years of conviction. For probationary sentences for impaired driving under
9 G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special
10 probation, but not including an activated suspended sentence, shall not exceed one-fourth
11 the maximum penalty allowed by law. ~~For probationary sentences which include a period of~~
12 ~~imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment~~
13 ~~(IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an~~
14 ~~incident of special probation, but not including an activated suspended sentence, shall not exceed~~
15 ~~six months or one half of the maximum term of the suspended sentence, whichever is less. In~~
16 ~~imposing a sentence of special probation, the judge may credit any time spent committed~~
17 ~~or confined, as a result of the charge, to either the suspended sentence or to the~~
18 ~~imprisonment required for special probation. The original period of probation, including~~
19 ~~the period of imprisonment required for special probation, shall be as specified in G.S.~~
20 ~~15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S.~~
21 ~~15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise~~
22 ~~provided for probationary sentences."~~

23 Section 5. This act becomes effective December 1, 1998.