

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 494
Committee Substitute Favorable 5/25/11
Committee Substitute #2 Favorable 6/8/11

Short Title: Continuous Alcohol Monitoring Law Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS AS A CONDITION OF PRETRIAL RELEASE, AS A CONDITION OF PROBATION, TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES; AND TO ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534(a) reads as rewritten:

"(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- (1) Release the defendant on his written promise to appear.
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system, and that any violation of this condition be reported by the monitoring provider to the district attorney.

SECTION 2. G.S. 15A-534.1(a)(2) reads as rewritten:

"(2) A judge may impose the following conditions on pretrial release:

- a. That the defendant stay away from the home, school, business or place of employment of the alleged ~~victim~~; victim.



- 1 b. That the defendant refrain from assaulting, beating, molesting, or
2 wounding the alleged ~~victim~~;victim.
- 3 c. That the defendant refrain from removing, damaging or injuring
4 specifically identified ~~property~~;property.
- 5 d. That the defendant may visit his or her child or children at times and
6 places provided by the terms of any existing order entered by a
7 judge.
- 8 e. That the defendant abstain from alcohol consumption, as verified by
9 the use of an approved continuous alcohol monitoring system, and
10 that any violation of this condition be reported by the monitoring
11 provider to the district attorney.

12 The conditions set forth above may be imposed in addition to requiring that
13 the defendant execute a secured appearance bond."

14 **SECTION 3.** G.S. 15A-1340.11(6) reads as rewritten:

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

- 18 a. Special probation as defined in G.S. 15A-1351(a).
19 b. Assignment to a residential program.
20 c. House arrest with electronic monitoring.
21 d. Intensive probation.
22 e. Assignment to a day-reporting center.
23 f. Assignment to a drug treatment court program.
24 g. Abstinence from alcohol consumption and compliance with
25 recommended treatment, as verified by a continuous alcohol
26 monitoring system approved by the Department of Correction when
27 alcohol dependency or chronic abuse has been identified by a
28 substance abuse assessment."

29 **SECTION 4.** G.S. 15A-1343(b), as amended by S.L. 2011-62, reads as rewritten:

30 "(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- 31 (1) Commit no criminal offense in any jurisdiction.
32 (2) Remain accessible to the probation officer by making the defendant's
33 whereabouts known to the officer and not leave the county of residence or
34 the State of North Carolina unless granted written permission to leave by the
35 court or his probation officer.
36 (3) Report as directed by the court or his probation officer to the officer at
37 reasonable times and places and in a reasonable manner, permit the officer to
38 visit him at reasonable times, answer all reasonable inquiries by the officer
39 and obtain prior approval from the officer for, and notify the officer of, any
40 change in address or employment.
41 (4) Satisfy child support and other family obligations as required by the court. If
42 the court requires the payment of child support, the amount of the payments
43 shall be determined as provided in G.S. 50-13.4(c).
44 (5) Possess no firearm, explosive device or other deadly weapon listed in
45 G.S. 14-269 without the written permission of the court.
46 (6) Pay a supervision fee as specified in subsection (c1).
47 (7) Remain gainfully and suitably employed or faithfully pursue a course of
48 study or of vocational training that will equip him for suitable employment.
49 A defendant pursuing a course of study or of vocational training shall abide
50 by all of the rules of the institution providing the education or training, and
51 the probation officer shall forward a copy of the probation judgment to that

- 1 institution and request to be notified of any violations of institutional rules
2 by the defendant.
- 3 (8) Notify the probation officer if he fails to obtain or retain satisfactory
4 employment.
- 5 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
6 reparation as provided in subsection (d).
- 7 (10) Pay the State of North Carolina for the costs of appointed counsel, public
8 defender, or appellate defender to represent him in the case(s) for which he
9 was placed on probation.
- 10 (11) Repealed by Session Law 2011-62.
- 11 (12) Attend and complete an abuser treatment program if (i) the court finds the
12 defendant is responsible for acts of domestic violence and (ii) there is a
13 program, approved by the Domestic Violence Commission, reasonably
14 available to the defendant, unless the court finds that such would not be in
15 the best interests of justice.
- 16 (13) Submit at reasonable times to warrantless searches by a probation officer of
17 the probationer's person and of the probationer's vehicle and premises while
18 the probationer is present, for purposes directly related to the probation
19 supervision, but the probationer may not be required to submit to any other
20 search that would otherwise be unlawful.
- 21 (14) Submit to warrantless searches by a law enforcement officer of the
22 probationer's person and of the probationer's vehicle, upon a reasonable
23 suspicion that the probationer is engaged in criminal activity or is in
24 possession of a firearm, explosive device, or other deadly weapon listed in
25 G.S. 14-269 without written permission of the court.
- 26 (15) Not use, possess, or control any illegal drug or controlled substance unless it
27 has been prescribed for him or her by a licensed physician and is in the
28 original container with the prescription number affixed on it; not knowingly
29 associate with any known or previously convicted users, possessors, or
30 sellers of any such illegal drugs or controlled substances; and not knowingly
31 be present at or frequent any place where such illegal drugs or controlled
32 substances are sold, kept, or used.
- 33 (16) Supply a breath, urine, or blood specimen for analysis of the possible
34 presence of prohibited drugs or alcohol when instructed by the defendant's
35 probation officer for purposes directly related to the probation supervision. If
36 the results of the analysis are positive, the probationer may be required to
37 reimburse the Department of Correction for the actual costs of drug or
38 alcohol screening and testing.

39 ~~A defendant shall not pay costs associated with a substance abuse monitoring program or~~
40 ~~any other special condition of probation in lieu of, or prior to, the payments required by this~~
41 ~~subsection.~~

42 In addition to these regular conditions of probation, a defendant required to serve an active
43 term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or
44 G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and
45 regulations of the Department of Correction governing the conduct of inmates while
46 imprisoned and report to a probation officer in the State of North Carolina within 72 hours of
47 his discharge from the active term of imprisonment.

48 Regular conditions of probation apply to each defendant placed on supervised probation
49 unless the presiding judge specifically exempts the defendant from one or more of the
50 conditions in open court and in the judgment of the court. It is not necessary for the presiding

1 judge to state each regular condition of probation in open court, but the conditions must be set
2 forth in the judgment of the court.

3 Defendants placed on unsupervised probation are subject to the provisions of this
4 subsection, except that defendants placed on unsupervised probation are not subject to the
5 regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), (15), and (16) of this
6 subsection."

7 **SECTION 5.** G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

8 "(b1) Special Conditions. – In addition to the regular conditions of probation specified in
9 subsection (b), the court may, as a condition of probation, require that during the probation the
10 defendant comply with one or more of the following special conditions:

11 ...

12 (2c) Abstain from alcohol consumption and submit to continuous alcohol
13 monitoring when alcohol dependency or chronic abuse has been identified
14 by a substance abuse assessment.

15"

16 **SECTION 6.** G.S. 15A-1343.2(f) reads as rewritten:

17 "(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding
18 judge specifically finds in the judgment of the court that delegation is not appropriate, the
19 Division of Community Corrections in the Department of Correction may require an offender
20 sentenced to intermediate punishment to:

- 21 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
22 law for this ~~supervision;~~ supervision.
- 23 (2) Submit to a curfew which requires the offender to remain in a specified
24 place for a specified period each day and wear a device that permits the
25 offender's compliance with the condition to be monitored
26 ~~electronically;~~ electronically.
- 27 (3) Submit to substance abuse assessment, monitoring or ~~treatment;~~ or treatment,
28 including continuous alcohol monitoring when abstinence from alcohol
29 consumption has been specified as a term of probation.
- 30 (4) Participate in an educational or vocational skills development program.
- 31 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
32 Chapter 14 of the General Statutes, if the defendant is described by
33 G.S. 14-208.40(a)(2).

34 If the Division imposes any of the above requirements, then it may subsequently reduce or
35 remove those same requirements.

36 If the probation officer exercises authority delegated to him or her by the court pursuant to
37 this subsection, the offender may file a motion with the court to review the action taken by the
38 probation officer. The offender shall be given notice of the right to seek such a court review.
39 The Division may exercise any authority delegated to it under this subsection only if it first
40 determines that the offender has failed to comply with one or more of the conditions of
41 probation imposed by the court."

42 **SECTION 7.** G.S. 15A-1343.3 reads as rewritten:

43 **"§ 15A-1343.3. Department of Corrections to establish regulations for continuous alcohol**
44 **monitoring ~~systems;~~ systems; payment of fees; authority to terminate**
45 **monitoring.**

46 (a) The Department of Correction shall establish regulations for continuous alcohol
47 monitoring systems that are authorized for use by the courts as evidence that an offender on
48 probation has abstained from the use of alcohol for a specified period of time. A "continuous
49 alcohol monitoring system" is a device that is worn by a person that can detect, monitor, record,
50 and report the amount of alcohol within the wearer's system over a continuous 24-hour daily
51 basis. The regulations shall include the procedures for supervision of the offender, collection

1 and monitoring of the results, and the transmission of the data to the court for consideration by
2 the court. All courts, including those using continuous alcohol monitoring systems prior to July
3 4, 2007, shall comply with the regulations established by the Department pursuant to this
4 section.

5 The Secretary, or the Secretary's designee, shall approve continuous alcohol monitoring
6 systems for use by the courts prior to their use by a court as evidence of alcohol abstinence, or
7 their use as a condition of probation. The Secretary shall not unreasonably withhold approval of
8 a continuous alcohol monitoring system and shall consult with the Division of Purchase and
9 Contract in the Department of Administration to ensure that potential vendors are not
10 discriminated against.

11 (b) Any fees or costs paid by an offender on probation in order to comply with
12 continuous alcohol monitoring shall be paid directly to the monitoring provider. A monitoring
13 provider shall not terminate the provision of continuous alcohol monitoring for nonpayment of
14 fees unless authorized by the court."

15 **SECTION 8.** Article 82 of Chapter 15A of the General Statutes is amended by
16 adding a new section to read:

17 **§ 15A-1343.4. Discretionary use of continuous alcohol monitoring systems in DWI and**
18 **drug courts.**

19 Discretionary use of continuous alcohol monitoring systems for offenders who are not
20 required by law as a condition of pretrial release or probation abstain from the use of alcohol
21 for a specified period of time shall be permitted and may be imposed in a matter before a Drug
22 Treatment Program Court in the sole discretion of the judge presiding."

23 **SECTION 9.** G.S. 20-28(a) reads as rewritten:

24 "(a) Driving While License Revoked. – Except as provided in subsection (a1) of this
25 section, any person whose drivers license has been revoked who drives any motor vehicle upon
26 the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon
27 conviction, the person's license shall be revoked for an additional period of one year for the
28 first offense, two years for the second offense, and permanently for a third or subsequent
29 offense.

30 If the person's license was originally revoked for an impaired driving revocation, the court
31 may order as a condition of probation that the offender abstain from alcohol consumption and
32 verify compliance by use of a continuous alcohol monitoring for a minimum period of 90 days.

33 The restoree of a revoked drivers license who operates a motor vehicle upon the highways
34 of the State without maintaining financial responsibility as provided by law shall be punished
35 as for driving without a license."

36 **SECTION 10.** G.S. 20-179 reads as rewritten:

37 **§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
38 **grossly aggravating and aggravating and mitigating factors; punishments.**

39 ...

40 (g) Level One Punishment. – A defendant subject to Level One punishment may be
41 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
42 that includes a minimum term of not less than 30 days and a maximum term of not more than
43 24 months. The term of imprisonment may be suspended only if a condition of special
44 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
45 days. A judge may reduce the minimum term of imprisonment required to a term of not less
46 than 10 days if a condition of special probation is imposed to require that a defendant abstain
47 from alcohol consumption and be monitored by a continuous alcohol monitoring system
48 approved by the Department of Correction for a period of not less than 120 days. If the
49 defendant is monitored on an approved continuous alcohol monitoring system during the
50 pretrial period, up to 60 days of pretrial monitoring may be credited against the 120-day
51 monitoring requirement for probation. If the defendant is placed on probation, the judge shall

1 impose a requirement that the defendant obtain a substance abuse assessment and the education
2 or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition
3 of probation. The judge may impose any other lawful condition of probation.

4 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be
5 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
6 includes a minimum term of not less than seven days and a maximum term of not more than 12
7 months. The term of imprisonment may be suspended only if a condition of special probation is
8 imposed to require the defendant to serve a term of imprisonment of at least seven ~~days~~days or
9 to abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous
10 alcohol monitoring system approved by the Department of Correction. If the defendant is
11 monitored on an approved continuous alcohol monitoring system during the pretrial period, up
12 to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement
13 for probation. If the defendant is placed on probation, the judge shall impose a requirement that
14 the defendant obtain a substance abuse assessment and the education or treatment required by
15 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
16 may impose any other lawful condition of probation.

17 ~~(h1) The judge may impose, as a condition of probation for defendants subject to Level~~
18 ~~One or Level Two punishments, that the defendant abstain from alcohol consumption for a~~
19 ~~minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring~~
20 ~~system. The total cost to the defendant for the continuous alcohol monitoring system may not~~
21 ~~exceed one thousand dollars (\$1,000). The defendant's abstinence from alcohol shall be verified~~
22 ~~by a continuous alcohol monitoring system of a type approved by the Department of~~
23 ~~Correction.~~

24 ~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
25 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
26 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
27 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
28 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

29 ~~(h3) Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be~~
30 ~~paid to the clerk of court for the county in which the judgment was entered or the deferred~~
31 ~~prosecution agreement was filed. Fees or costs collected under this subsection shall be~~
32 ~~transmitted to the entity providing the continuous alcohol monitoring system.~~

33 ...

34 (k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol
35 Monitoring. – The judge may order that as a condition of special probation for any level of
36 offense under G.S. 20-179 the defendant abstain from alcohol consumption, as verified by a
37 continuous alcohol monitoring system of a type approved by the Department of Correction.

38 (k3) The court, in the sentencing order, may authorize probation officers to require
39 defendants to submit to continuous alcohol monitoring for assessment purposes if the defendant
40 has been required to abstain from alcohol consumption during the term of probation, and the
41 probation officer believes the defendant is consuming alcohol. The defendant shall bear the
42 costs of the continuous alcohol monitoring system if the use of the system has been authorized
43 by a judge in accordance with this subsection.

44 (k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section,
45 if the court finds, upon good cause shown, that the defendant should not be required to pay the
46 costs of the continuous alcohol monitoring system, the court shall not impose the use of a
47 continuous alcohol monitoring system unless the local governmental entity responsible for the
48 incarceration of the defendant in the local confinement facility agrees to pay the costs of the
49 system.

50"

51 **SECTION 11.** G.S. 50-13.2 is amended by adding a new subsection to read:

1 "(b2) Any order for custody, including visitation, may, as a condition of such custody or
2 visitation, require either or both parents, or any other person seeking custody or visitation, to
3 abstain from consuming alcohol and may require submission to an approved continuous alcohol
4 monitoring system to verify compliance with this condition of custody or visitation. Any order
5 pursuant to this subsection shall include an order to the monitoring provider to report any
6 violation of the order to the court and each party to the action. Failure to comply with this
7 condition shall be grounds for civil or criminal contempt."

8 **SECTION 12.** This act becomes effective December 1, 2011, and applies to
9 offenses committed or any custody and visitation orders issued on or after that date.