

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 494

Short Title: Continuous Alcohol Monitoring Law Changes. (Public)

Sponsors: Representatives M. Alexander, Guice, T. Moore, and Stam (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B, if favorable, Finance.

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS
3 AS A CONDITION OF PROBATION, TO MEET REQUIREMENTS FOR THE
4 RESTORATION OF A REVOKED DRIVERS LICENSE; TO MITIGATE
5 PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES; AND TO ENSURE
6 COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-534.1(a)(2) reads as rewritten:

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

- 10 a. That the defendant stay away from the home, school, business or
11 place of employment of the alleged ~~victim~~; victim.
12 b. That the defendant refrain from assaulting, beating, molesting, or
13 wounding the alleged ~~victim~~; victim.
14 c. That the defendant refrain from removing, damaging or injuring
15 specifically identified ~~property~~; property.
16 d. That the defendant may visit his or her child or children at times and
17 places provided by the terms of any existing order entered by a
18 judge.
19 e. That the defendant abstain from alcohol consumption, as verified by
20 the use of an approved continuous alcohol monitoring system.

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

23 **SECTION 2.** G.S. 15A-1340.11(6) reads as rewritten:

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

- 27 a. Special probation as defined in G.S. 15A-1351(a).
28 b. Assignment to a residential program.
29 c. House arrest with electronic monitoring.
30 d. Intensive probation.
31 e. Assignment to a day-reporting center.
32 f. Assignment to a drug treatment court program.
33 g. Abstinence from alcohol consumption and compliance with
34 recommended treatment, as verified by a continuous alcohol
35 monitoring system approved by the Department of Correction when



1 alcohol dependency or chronic abuse has been identified by a
2 substance abuse assessment."

3 **SECTION 3.** G.S. 15A-1343(b) reads as rewritten:

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

- 5 (1) Commit no criminal offense in any jurisdiction.
- 6 (2) Remain within the jurisdiction of the court unless granted written permission
7 to leave by the court or his probation officer.
- 8 (3) Report as directed by the court or his probation officer to the officer at
9 reasonable times and places and in a reasonable manner, permit the officer to
10 visit him at reasonable times, answer all reasonable inquiries by the officer
11 and obtain prior approval from the officer for, and notify the officer of, any
12 change in address or employment.
- 13 (4) Satisfy child support and other family obligations as required by the court. If
14 the court requires the payment of child support, the amount of the payments
15 shall be determined as provided in G.S. 50-13.4(c).
- 16 (5) Possess no firearm, explosive device or other deadly weapon listed in
17 G.S. 14-269 without the written permission of the court.
- 18 (6) Pay a supervision fee as specified in subsection (c1).
- 19 (7) Remain gainfully and suitably employed or faithfully pursue a course of
20 study or of vocational training that will equip him for suitable employment.
21 A defendant pursuing a course of study or of vocational training shall abide
22 by all of the rules of the institution providing the education or training, and
23 the probation officer shall forward a copy of the probation judgment to that
24 institution and request to be notified of any violations of institutional rules
25 by the defendant.
- 26 (8) Notify the probation officer if he fails to obtain or retain satisfactory
27 employment.
- 28 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
29 reparation as provided in subsection (d).
- 30 (10) Pay the State of North Carolina for the costs of appointed counsel, public
31 defender, or appellate defender to represent him in the case(s) for which he
32 was placed on probation.
- 33 (11) At a time to be designated by his probation officer, visit with his probation
34 officer a facility maintained by the Division of Prisons.
- 35 (12) Attend and complete an abuser treatment program if (i) the court finds the
36 defendant is responsible for acts of domestic violence and (ii) there is a
37 program, approved by the Domestic Violence Commission, reasonably
38 available to the defendant, unless the court finds that such would not be in
39 the best interests of justice.

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

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

49 Regular conditions of probation apply to each defendant placed on supervised probation
50 unless the presiding judge specifically exempts the defendant from one or more of the
51 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), and (11)."

6 **SECTION 4.** G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

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

10 ...

11 (2c) Abstain from alcohol consumption and submit to continuous alcohol
12 monitoring when alcohol dependency or chronic abuse has been identified
13 by a substance abuse assessment.

14"

15 **SECTION 5.** G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

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

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

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

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

41 **SECTION 6.** Article 82 of Chapter 15A of the General Statutes is amended by
42 adding a new section to read:

43 **§ 15A-1343.4. Discretionary use of continuous alcohol monitoring systems in DWI and**
44 **drug courts.**

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

49 **SECTION 7.** G.S. 20-28(a) reads as rewritten:

50 "(a) Driving While License Revoked. – Except as provided in subsection (a1) of this
51 section, any person whose drivers license has been revoked who drives any motor vehicle upon

1 the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon
2 conviction, the person's license shall be revoked for an additional period of one year for the
3 first offense, two years for the second offense, and permanently for a third or subsequent
4 offense.

5 In cases involving revocation as a result of convictions under G.S. 20-138.1, the judge may
6 order the offender to abstain from alcohol consumption and verify compliance by continuous
7 alcohol monitoring for a minimum period of 90 days instead of incarceration.

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

11 **SECTION 8.** G.S. 20-179 reads as rewritten:

12 **"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
13 **grossly aggravating and aggravating and mitigating factors; punishments.**

14 ...

15 (g) Level One Punishment. – A defendant subject to Level One punishment may be
16 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
17 that includes a minimum term of not less than 30 days and a maximum term of not more than
18 24 months. The term of imprisonment may be suspended only if a condition of special
19 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
20 days. A judge may also require as a condition of special probation after the 30-day term of
21 imprisonment required by this subsection is served that a defendant be monitored by a
22 continuous alcohol monitoring system approved by the Department of Correction for a period
23 of not less than 120 days. The minimum term of imprisonment may be reduced to a term of not
24 less than 10 days if the condition of special probation of continuous alcohol monitoring, by a
25 continuous alcohol monitoring system approved by the Department of Correction for a period
26 of not less than 120 days, is imposed by the judge. If the defendant is monitored on an
27 approved continuous alcohol monitoring system during the pretrial period, up to 60 days of
28 pretrial monitoring may be credited against the 120-day monitoring requirement for probation.
29 If the defendant is placed on probation, the judge shall impose a requirement that the defendant
30 obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6
31 for the restoration of a drivers license and as a condition of probation. The judge may impose
32 any other lawful condition of probation.

33 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be
34 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
35 includes a minimum term of not less than seven days and a maximum term of not more than 12
36 months. The term of imprisonment may be suspended only if a condition of special probation is
37 imposed to require the defendant to serve a term of imprisonment of at least seven ~~days.~~ days or
38 if the defendant has abstained from consuming alcohol for at least 90 consecutive days, as
39 verified by a continuous alcohol monitoring system approved by the Department of Correction.
40 If the defendant is monitored on an approved continuous alcohol monitoring system during the
41 pretrial period, up to 60 days of pretrial monitoring may be credited against the 120-day
42 monitoring requirement for probation. If the defendant is placed on probation, the judge shall
43 impose a requirement that the defendant obtain a substance abuse assessment and the education
44 or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition
45 of probation. The judge may impose any other lawful condition of probation.

46 ~~(h1) The judge may impose, as a condition of probation for defendants subject to Level~~
47 ~~One or Level Two punishments, that the defendant abstain from alcohol consumption for a~~
48 ~~minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring~~
49 ~~system. The total cost to the defendant for the continuous alcohol monitoring system may not~~
50 ~~exceed one thousand dollars (\$1,000). The defendant's abstinence from alcohol shall be verified~~

1 by a continuous alcohol monitoring system of a type approved by the Department of
2 Correction.

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

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

12 ...

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

17 (k3) Probation officers may with a judge's authorization, require defendants to submit to
18 continuous alcohol monitoring for assessment purposes if the defendant has been required to
19 abstain from alcohol consumption during the term of probation and the probation officer
20 believes the defendant is consuming alcohol. The defendant shall bear the costs of the
21 continuous alcohol monitoring system if the use of the system has been authorized by a judge
22 in accordance with this subsection.

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

29"

30 **SECTION 9.** G.S. 50-13.2 is amended by adding a new subsection to read:

31 "(b2) Any order for custody, including visitation, may, as a condition of such custody or
32 visitation, require either or both parents, or any other person seeking custody or visitation, to
33 abstain from consuming alcohol and may require submission to an approved continuous alcohol
34 monitoring system to verify compliance with this condition of custody or visitation. Failure to
35 comply with this condition shall be grounds for civil or criminal contempt."

36 **SECTION 10.** This act becomes effective December 1, 2011, and applies to
37 offenses committed, sentences imposed, or any custody and visitation orders issued on or after
38 that date.