

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 494  
PROPOSED COMMITTEE SUBSTITUTE H494-PCS80240-SA-44

Short Title: Continuous Alcohol Monitoring Law Changes.

(Public)

Sponsors:

Referred to:

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.



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1           g. Abstinence from alcohol consumption and compliance with  
2           recommended treatment, as verified by a continuous alcohol  
3           monitoring system approved by the Department of Correction when  
4           alcohol dependency or chronic abuse has been identified by a  
5           substance abuse assessment."

6           **SECTION 3.** G.S. 15A-1343(b), as amended by S.L. 2011-62, reads as rewritten:

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

- 8           (1) Commit no criminal offense in any jurisdiction.
- 9           (2) Remain accessible to the probation officer by making the defendant's  
10           whereabouts known to the officer and not leave the county of residence or  
11           the State of North Carolina unless granted written permission to leave by the  
12           court or his probation officer.
- 13           (3) Report as directed by the court or his probation officer to the officer at  
14           reasonable times and places and in a reasonable manner, permit the officer to  
15           visit him at reasonable times, answer all reasonable inquiries by the officer  
16           and obtain prior approval from the officer for, and notify the officer of, any  
17           change in address or employment.
- 18           (4) Satisfy child support and other family obligations as required by the court. If  
19           the court requires the payment of child support, the amount of the payments  
20           shall be determined as provided in G.S. 50-13.4(c).
- 21           (5) Possess no firearm, explosive device or other deadly weapon listed in  
22           G.S. 14-269 without the written permission of the court.
- 23           (6) Pay a supervision fee as specified in subsection (c1).
- 24           (7) Remain gainfully and suitably employed or faithfully pursue a course of  
25           study or of vocational training that will equip him for suitable employment.  
26           A defendant pursuing a course of study or of vocational training shall abide  
27           by all of the rules of the institution providing the education or training, and  
28           the probation officer shall forward a copy of the probation judgment to that  
29           institution and request to be notified of any violations of institutional rules  
30           by the defendant.
- 31           (8) Notify the probation officer if he fails to obtain or retain satisfactory  
32           employment.
- 33           (9) Pay the costs of court, any fine ordered by the court, and make restitution or  
34           reparation as provided in subsection (d).
- 35           (10) Pay the State of North Carolina for the costs of appointed counsel, public  
36           defender, or appellate defender to represent him in the case(s) for which he  
37           was placed on probation.
- 38           (11) Repealed by Session Law 2011-62.
- 39           (12) Attend and complete an abuser treatment program if (i) the court finds the  
40           defendant is responsible for acts of domestic violence and (ii) there is a  
41           program, approved by the Domestic Violence Commission, reasonably  
42           available to the defendant, unless the court finds that such would not be in  
43           the best interests of justice.
- 44           (13) Submit at reasonable times to warrantless searches by a probation officer of  
45           the probationer's person and of the probationer's vehicle and premises while  
46           the probationer is present, for purposes directly related to the probation  
47           supervision, but the probationer may not be required to submit to any other  
48           search that would otherwise be unlawful.
- 49           (14) Submit to warrantless searches by a law enforcement officer of the  
50           probationer's person and of the probationer's vehicle, upon a reasonable  
51           suspicion that the probationer is engaged in criminal activity or is in

1 possession of a firearm, explosive device, or other deadly weapon listed in  
2 G.S. 14-269 without written permission of the court.

3 (15) Not use, possess, or control any illegal drug or controlled substance unless it  
4 has been prescribed for him or her by a licensed physician and is in the  
5 original container with the prescription number affixed on it; not knowingly  
6 associate with any known or previously convicted users, possessors, or  
7 sellers of any such illegal drugs or controlled substances; and not knowingly  
8 be present at or frequent any place where such illegal drugs or controlled  
9 substances are sold, kept, or used.

10 (16) Supply a breath, urine, or blood specimen for analysis of the possible  
11 presence of prohibited drugs or alcohol when instructed by the defendant's  
12 probation officer for purposes directly related to the probation supervision. If  
13 the results of the analysis are positive, the probationer may be required to  
14 reimburse the Department of Correction for the actual costs of drug or  
15 alcohol screening and testing.

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

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

25 Regular conditions of probation apply to each defendant placed on supervised probation  
26 unless the presiding judge specifically exempts the defendant from one or more of the  
27 conditions in open court and in the judgment of the court. It is not necessary for the presiding  
28 judge to state each regular condition of probation in open court, but the conditions must be set  
29 forth in the judgment of the court.

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

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

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

38 ...

39 (2c) Abstain from alcohol consumption and submit to continuous alcohol  
40 monitoring when alcohol dependency or chronic abuse has been identified  
41 by a substance abuse assessment.

42 ...."

43 **SECTION 5.** G.S. 15A-1343.2(f) reads as rewritten:

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

48 (1) Perform up to 50 hours of community service, and pay the fee prescribed by  
49 law for this ~~supervision~~; supervision.

50 (2) Submit to a curfew which requires the offender to remain in a specified  
51 place for a specified period each day and wear a device that permits the

1 offender's compliance with the condition to be monitored  
2 ~~electronically;electronically.~~

3 (3) Submit to substance abuse assessment, monitoring or ~~treatment; ortreatment,~~  
4 including continuous alcohol monitoring when abstinence from alcohol  
5 consumption has been specified as a term of probation.

6 (4) Participate in an educational or vocational skills development program.

7 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of  
8 Chapter 14 of the General Statutes, if the defendant is described by  
9 G.S. 14-208.40(a)(2).

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

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

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

20 **"§ 15A-1343.4. Discretionary use of continuous alcohol monitoring systems in DWI and**  
21 **drug courts.**

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

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

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

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

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

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

40 **"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**  
41 **grossly aggravating and aggravating and mitigating factors; punishments.**

42 ...

43 (g) Level One Punishment. – A defendant subject to Level One punishment may be  
44 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment  
45 that includes a minimum term of not less than 30 days and a maximum term of not more than  
46 24 months. The term of imprisonment may be suspended only if a condition of special  
47 probation is imposed to require the defendant to serve a term of imprisonment of at least 30  
48 days. A judge may also require as a condition of special probation after the 30-day term of  
49 imprisonment required by this subsection is served that a defendant be monitored by a  
50 continuous alcohol monitoring system approved by the Department of Correction for a period  
51 of not less than 120 days. The minimum term of imprisonment may be reduced to a term of not

1 less than 10 days if the condition of special probation of continuous alcohol monitoring, by a  
2 continuous alcohol monitoring system approved by the Department of Correction for a period  
3 of not less than 120 days, is imposed by the judge. If the defendant is monitored on an  
4 approved continuous alcohol monitoring system during the pretrial period, up to 60 days of  
5 pretrial monitoring may be credited against the 120-day monitoring requirement for probation.  
6 If the defendant is placed on probation, the judge shall impose a requirement that the defendant  
7 obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6  
8 for the restoration of a drivers license and as a condition of probation. The judge may impose  
9 any other lawful condition of probation.

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

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

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

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

39 ...

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

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

50 (k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section,  
51 if the court finds, upon good cause shown, that the defendant should not be required to pay the

1 costs of the continuous alcohol monitoring system, the court shall not impose the use of a  
2 continuous alcohol monitoring system unless the local governmental entity responsible for the  
3 incarceration of the defendant in the local confinement facility agrees to pay the costs of the  
4 system.

5 "...."

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

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

12 **SECTION 10.** This act becomes effective December 1, 2011, and applies to  
13 offenses committed or any custody and visitation orders issued on or after that date.