

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  
PROPOSED SENATE COMMITTEE SUBSTITUTE H494-PCS30669-SA-89

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 PRETRIAL RELEASE, AS A CONDITION OF PROBATION,  
4 TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES, AND TO  
5 ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

6 The General Assembly of North Carolina enacts:

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

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

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

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

32 **SECTION 1.(b)** G.S. 15A-534(i) is repealed.



\* H 4 9 4 - P C S 3 0 6 6 9 - S A - 8 9 \*

**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.
  - b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged ~~victim~~; victim.
  - c. That the defendant refrain from removing, damaging or injuring specifically identified ~~property~~; property.
  - d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
  - e. That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

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

**SECTION 3.** G.S. 15A-1343(a1) reads as rewritten:

"(a1) Community and Intermediate Probation Conditions. — In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

- (1) House arrest with electronic monitoring.
- (2) Perform community service.
- (3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
- (4) Substance abuse assessment, monitoring, or treatment.
- (4a) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.
- (5) Participation in an educational or vocational skills development program, including an evidence-based program.
- (6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2)."

**SECTION 4.** G.S. 15A-1343(b) reads as rewritten:

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

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

- 1 (3a) Not to abscond, by willfully avoiding supervision or by willfully making the  
2 defendant's whereabouts unknown to the supervising probation officer.
- 3 (4) Satisfy child support and other family obligations as required by the court. If  
4 the court requires the payment of child support, the amount of the payments  
5 shall be determined as provided in G.S. 50-13.4(c).
- 6 (5) Possess no firearm, explosive device or other deadly weapon listed in  
7 G.S. 14-269 without the written permission of the court.
- 8 (6) Pay a supervision fee as specified in subsection (c1).
- 9 (7) Remain gainfully and suitably employed or faithfully pursue a course of  
10 study or of vocational training that will equip him for suitable employment.  
11 A defendant pursuing a course of study or of vocational training shall abide  
12 by all of the rules of the institution providing the education or training, and  
13 the probation officer shall forward a copy of the probation judgment to that  
14 institution and request to be notified of any violations of institutional rules  
15 by the defendant.
- 16 (8) Notify the probation officer if he fails to obtain or retain satisfactory  
17 employment.
- 18 (9) Pay the costs of court, any fine ordered by the court, and make restitution or  
19 reparation as provided in subsection (d).
- 20 (10) Pay the State of North Carolina for the costs of appointed counsel, public  
21 defender, or appellate defender to represent him in the case(s) for which he  
22 was placed on probation.
- 23 (11) Repealed by Session Laws 2011-62, s. 1, as amended by Session Laws  
24 2011-412, s. 2.2, effective December 1, 2011, and applicable to offenses  
25 committed on or after December 1, 2011.
- 26 (12) Attend and complete an abuser treatment program if (i) the court finds the  
27 defendant is responsible for acts of domestic violence and (ii) there is a  
28 program, approved by the Domestic Violence Commission, reasonably  
29 available to the defendant, unless the court finds that such would not be in  
30 the best interests of justice.
- 31 (13) Submit at reasonable times to warrantless searches by a probation officer of  
32 the probationer's person and of the probationer's vehicle and premises while  
33 the probationer is present, for purposes directly related to the probation  
34 supervision, but the probationer may not be required to submit to any other  
35 search that would otherwise be unlawful.
- 36 (14) Submit to warrantless searches by a law enforcement officer of the  
37 probationer's person and of the probationer's vehicle, upon a reasonable  
38 suspicion that the probationer is engaged in criminal activity or is in  
39 possession of a firearm, explosive device, or other deadly weapon listed in  
40 G.S. 14-269 without written permission of the court.
- 41 (15) Not use, possess, or control any illegal drug or controlled substance unless it  
42 has been prescribed for him or her by a licensed physician and is in the  
43 original container with the prescription number affixed on it; not knowingly  
44 associate with any known or previously convicted users, possessors, or  
45 sellers of any such illegal drugs or controlled substances; and not knowingly  
46 be present at or frequent any place where such illegal drugs or controlled  
47 substances are sold, kept, or used.
- 48 (16) Supply a breath, urine, or blood specimen for analysis of the possible  
49 presence of prohibited drugs or alcohol when instructed by the defendant's  
50 probation officer for purposes directly related to the probation supervision. If  
51 the results of the analysis are positive, the probationer may be required to

1 reimburse the Division of Adult Correction of the Department of Public  
2 Safety for the actual costs of drug or alcohol screening and testing.

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

6 In addition to these regular conditions of probation, a defendant required to serve an active  
7 term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or  
8 G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and  
9 regulations of the Division of Adult Correction of the Department of Public Safety governing  
10 the conduct of inmates while imprisoned and report to a probation officer in the State of North  
11 Carolina within 72 hours of his discharge from the active term of imprisonment.

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

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

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

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

25 ...

26 (2c) Abstain from alcohol consumption and submit to continuous alcohol  
27 monitoring when alcohol dependency or chronic abuse has been identified  
28 by a substance abuse assessment.

29 ...."

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

31 "(f) Delegation to Probation Officer in Intermediate Punishments. — Unless the  
32 presiding judge specifically finds in the judgment of the court that delegation is not appropriate,  
33 the Section of Community Corrections of the Division of Adult Correction of the Department  
34 of Public Safety may require an offender sentenced to intermediate punishment to do any of the  
35 following:

- 36 (1) Perform up to 50 hours of community service, and pay the fee prescribed by  
37 law for this supervision.
- 38 (2) Submit to a curfew which requires the offender to remain in a specified  
39 place for a specified period each day and wear a device that permits the  
40 offender's compliance with the condition to be monitored electronically.
- 41 (3) Submit to substance abuse assessment, monitoring or ~~treatment~~.treatment,  
42 including continuous alcohol monitoring when abstinence from alcohol  
43 consumption has been specified as a term of probation.
- 44 (4) Participate in an educational or vocational skills development program,  
45 including an evidence-based program.
- 46 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of  
47 Chapter 14 of the General Statutes, if the defendant is described by  
48 G.S. 14-208.40(a)(2).
- 49 (6) Submit to a period or periods of confinement in a local confinement facility  
50 for a total of no more than six days per month during any three separate  
51 months during the period of probation. The six days per month confinement

1 provided for in this subdivision may only be imposed as two-day or  
2 three-day consecutive periods. When a defendant is on probation for  
3 multiple judgments, confinement periods imposed under this subdivision  
4 shall run concurrently and may total no more than six days per month.

5 (7) Submit to house arrest with electronic monitoring.

6 (8) Report to the offender's probation officer on a frequency to be determined by  
7 the officer.

8 If the Section imposes any of the above requirements, then it may subsequently reduce or  
9 remove those same requirements.

10 The probation officer may exercise authority delegated to him or her by the court pursuant  
11 to subsection (f) of this section after administrative review and approval by a Chief Probation  
12 Officer. The offender may file a motion with the court to review the action taken by the  
13 probation officer. The offender shall be given notice of the right to seek such a court review.  
14 However, the offender shall have no right of review if he or she has signed a written waiver of  
15 rights as required by this subsection. The Section may exercise any authority delegated to it  
16 under this subsection only if it first determines that the offender has failed to comply with one  
17 or more of the conditions of probation imposed by the court or the offender is determined to be  
18 high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the  
19 condition at subdivision (6) of this subsection may not be imposed unless the Section  
20 determines that the offender failed to comply with one or more of the conditions imposed by  
21 the court. Nothing in this section shall be construed to limit the availability of the procedures  
22 authorized under G.S. 15A-1345.

23 The Division shall adopt guidelines and procedures to implement the requirements of this  
24 section, which shall include a supervisor's approval prior to exercise of the delegation of  
25 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6)  
26 of this subsection, the probationer must first be presented with a violation report, with the  
27 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged  
28 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the  
29 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses  
30 who have relevant information concerning the alleged violations; and (iv) to examine any  
31 witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the  
32 probation officer and a supervisor signing as witnesses, the probationer may be confined for the  
33 period designated on the violation report."

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

35 **"§ 15A-1343.3. Division of Adult Correction of the Department of Public Safety to**  
36 **establish regulations for continuous alcohol monitoring systems.**~~systems;~~  
37 **payment of fees; authority to terminate monitoring.**

38 (a) The Division of Adult Correction of the Department of Public Safety shall establish  
39 regulations for continuous alcohol monitoring systems that are authorized for use by the courts  
40 as evidence that an offender on probation has abstained from the use of alcohol for a specified  
41 period of time. A "continuous alcohol monitoring system" is a device that is worn by a person  
42 that can detect, monitor, record, and report the amount of alcohol within the wearer's system  
43 over a continuous 24-hour daily basis. The regulations shall include the procedures for  
44 supervision of the offender, collection and monitoring of the results, and the transmission of the  
45 data to the court for consideration by the court. All courts, including those using continuous  
46 alcohol monitoring systems prior to July 4, 2007, shall comply with the regulations established  
47 by the Division pursuant to this section.

48 The Secretary, or the Secretary's designee, shall approve continuous alcohol monitoring  
49 systems for use by the courts prior to their use by a court as evidence of alcohol abstinence, or  
50 their use as a condition of probation. The Secretary shall not unreasonably withhold approval of  
51 a continuous alcohol monitoring system and shall consult with the Division of Purchase and

1 Contract in the Department of Administration to ensure that potential vendors are not  
2 discriminated against.

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

7 **SECTION 8.** G.S. 20-28(a) reads as rewritten:

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

14 If the person's license was originally revoked for an impaired driving revocation, the court  
15 may order as a condition of probation that the offender abstain from alcohol consumption and  
16 verify compliance by use of a continuous alcohol monitoring system, of a type approved by the  
17 Division of Adult Correction of the Department of Public Safety, for a minimum period of 90  
18 days.

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

22 **SECTION 9.** G.S. 20-179 reads as rewritten:

23 **"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**  
24 **grossly aggravating and aggravating and mitigating factors; punishments.**

25 ...

26 (g) Level One Punishment. – A defendant subject to Level One punishment may be  
27 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment  
28 that includes a minimum term of not less than 30 days and a maximum term of not more than  
29 24 months. The term of imprisonment may be suspended only if a condition of special  
30 probation is imposed to require the defendant to serve a term of imprisonment of at least 30  
31 days. A judge may reduce the minimum term of imprisonment required to a term of not less  
32 than 10 days if a condition of special probation is imposed to require that a defendant abstain  
33 from alcohol consumption and be monitored by a continuous alcohol monitoring system, of a  
34 type approved by the Division of Adult Correction of the Department of Public Safety, for a  
35 period of not less than 120 days. If the defendant is monitored on an approved continuous  
36 alcohol monitoring system during the pretrial period, up to 60 days of pretrial monitoring may  
37 be credited against the 120-day monitoring requirement for probation. If the defendant is placed  
38 on probation, the judge shall impose a requirement that the defendant obtain a substance abuse  
39 assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a  
40 drivers license and as a condition of probation. The judge may impose any other lawful  
41 condition of probation.

42 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be  
43 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that  
44 includes a minimum term of not less than seven days and a maximum term of not more than 12  
45 months. The term of imprisonment may be suspended only if a condition of special probation is  
46 imposed to require the defendant to serve a term of imprisonment of at least seven ~~days~~ days or  
47 to abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous  
48 alcohol monitoring system, of a type approved by the Division of Adult Correction of the  
49 Department of Public Safety. If the defendant is monitored on an approved continuous alcohol  
50 monitoring system during the pretrial period, up to 60 days of pretrial monitoring may be  
51 credited against the 90-day monitoring requirement for probation. If the defendant is placed on

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

5 ...

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

10 ...

11 (k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol  
12 Monitoring. – The judge may order that as a condition of special probation for any level of  
13 offense under G.S. 20-170 the defendant abstain from alcohol consumption, as verified by a  
14 continuous alcohol monitoring system, of a type approved by the Division of Adult Correction  
15 of the Department of Public Safety.

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

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

28 ...."

29 **SECTION 10.** G.S. 50-13.2 is amended by adding a new subsection to read:

30 "(b2) Any order for custody, including visitation, may, as a condition of such custody or  
31 visitation, require either or both parents, or any other person seeking custody or visitation, to  
32 abstain from consuming alcohol and may require submission to a continuous alcohol  
33 monitoring system, of a type approved by the Division of Adult Correction of the Department  
34 of Public Safety, to verify compliance with this condition of custody or visitation. Any order  
35 pursuant to this subsection shall include an order to the monitoring provider to report any  
36 violation of the order to the court and each party to the action. Failure to comply with this  
37 condition shall be grounds for civil or criminal contempt."

38 **SECTION 11.** This act becomes effective December 1, 2012, and applies to  
39 offenses committed or any custody and visitation orders issued on or after that date.