

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-146
HOUSE BILL 494**

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.(a) 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 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."

SECTION 1.(b) G.S. 15A-534(i) is repealed.

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.
- (3a) Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
- (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- (6) Pay a supervision fee as specified in subsection (c1).
- (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
- (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
- (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

- (11) Repealed by Session Laws 2011-62, s. 1, as amended by Session Laws 2011-412, s. 2.2, effective December 1, 2011, and applicable to offenses committed on or after December 1, 2011.
- (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.
- (13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.
- (14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.
- (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
- (16) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual costs of drug or alcohol screening and testing.

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

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

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

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

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

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

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

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

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

- (1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision.
- (2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (3) Submit to substance abuse assessment, monitoring or ~~treatment~~treatment, including continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a term of probation.
- (4) Participate in an educational or vocational skills development program, including an evidence-based program.
- (5) Submit 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).
- (6) Submit 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.
- (7) Submit to house arrest with electronic monitoring.
- (8) Report to the offender's probation officer on a frequency to be determined by the officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is

imposed to require the defendant to serve a term of imprisonment of at least seven ~~days-days~~ or to abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety. If the defendant is monitored on an approved continuous alcohol monitoring system during the pretrial period, up to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement for probation. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

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

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

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

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

...."

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

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

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

In the General Assembly read three times and ratified this the 2nd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:55 p.m. this 12th day of July, 2012