

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 494 (First Edition)
SHORT TITLE: Continuous Alcohol Monitoring Law Changes.
SPONSOR(S): Representatives M. Alexander, Stam, T. Moore, and Guice

Table with 5 columns: FISCAL IMPACT, Yes (X), No ( ), No Estimate Available ( ), and fiscal years (FY 2011-12 to FY 2015-16). Rows include REVENUE, EXPENDITURES (Correction, Probation, Judicial), and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

FISCAL SUMMARY:

According to the Sentencing and Policy Advisory Commission, the proposed legislation would have an impact on the prison population if revocation of probation is due to violation of the new condition only (abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring (CAM) system).

In addition, the Department of Correction Office of Research and Planning (DOC) reported that the Department does not anticipate a significant fiscal impact as a result of the proposed legislation, provided the offender pays the cost of CAM.

According to the Administrative Office of the Courts (AOC), the proposed legislation could result in the potential reduction in State and local government revenue. Also, the act would increase workload impact on court personnel. While many sections of the bill would impact court personnel, only the workload impact from Section 9 can be estimated. AOC stated Section 9 is anticipated to require ten positions and cost \$992,000 in the first full year of implementation (FY 2012-13).

### **BILL SUMMARY:**

The proposed legislation amends the definition of intermediate punishment by adding a new condition. The act also amends the DWI punishment levels, by adding conditions by which a judge may suspend a sentence. The proposed legislation becomes effective December 1, 2011, and applies to offenses committed, sentences imposed, or any custody and visitation orders issued on or after that date.

*SOURCE: BILL DIGEST H.B. 494 (03/29/0201)*

### **ASSUMPTIONS AND METHODOLOGY:**

#### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

However, the Sentencing and Policy Advisory Commission does not maintain statistical information on impaired driving offenses, as they are not punished under the Structured Sentencing Act. The Sentencing Commission did provide some general assessments about the proposed legislation. Additionally, the Department of Correction Office of Research and Planning (DOC) was asked to estimate the fiscal impact of the proposed legislation.

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

#### **Section 1:**

This section amends G.S. 15A-534.1(a)(2), Crimes of domestic violence; bail and pretrial release. The act expands the judge's authority in all cases in which the defendant is charged with assault on a female, stalking, communicating threats, or committing a felony provided in Articles 7A, 8, 10 or

15 of Chapter 14 of the General Statutes or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, to allow a judge to require a defendant to abstain from alcohol consumption and be subject to a continuous alcohol monitoring (CAM) system as a condition of pretrial release.

**Judicial Branch Impact:** Section 1 adds an additional condition for pretrial release, which increases the potential for violations of the conditions of pretrial release. Such violations would increase the number of bond hearings, which are estimated to take ten minutes of court time (excluding out of court preparation time). Each bond hearing for a case pending in superior court would impact the workload of a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each bond hearing for a case pending in district court would impact the workload of a district court judge, deputy clerk, and assistant district attorney. The Office of Indigent Defense Services would be impacted as well for indigent defendants. The number of impacted cases and the number of violations cannot be projected. As an example of one part of the potential pool, in 2010 there were nearly 28,000 defendants charged with Assault on a female, an offense which is frequently charged in domestic violation cases. In addition, there is the potential for more contempt hearings in Chapter 50B cases for those who violate the abstinence condition of pretrial release.

**Section 2:**

Section 2 amends G.S. 15A-1340.11(6) to add to the list of conditions that constitute intermediate punishment. The act states that an offender in a criminal case must abstain from alcohol consumption and be subject to a CAM system as a regular condition of probation, if alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

**DOC Impact:** According to the Sentencing Commission, the proposed amendment to G.S. 15A-1340.11(6) would not be expected to increase or decrease the number of convictions that receive an intermediate punishment. Rather, the proposed bill provides judges with an additional intermediate punishment option. Because the bill applies to intermediate punishments, it would have an impact on the prison population if revocation of probation is due to violation of this condition only (i.e., not in combination with violation of another condition that is currently allowed). The impact would also vary based on the offense class for which the offender received the suspended sentence.

For felony probationers, the proposed bill would primarily have an impact on the prison population. For misdemeanor probationers, the proposed bill would primarily have an impact on local jails. The Sentencing Commission has no data on which to base an estimate of the number of convictions in which judges may impose this proposed option, nor the number of revocations that may occur because of violation of this condition only.

**Judicial Branch Impact:** Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would

require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

**Section 3:**

This section deletes the provision in G.S. 15A-1343(b) that prohibits a defendant from paying the costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required as regular conditions of probation.

**Judicial Branch Impact:** AOC states that removing the language in G.S. 15A-1343 has the potential to impact State and local government revenues. Under the proposed legislation, costs associated with substance abuse monitoring or other special conditions of probation could be made first. Therefore, payments for restitution, fines, facilities fees, jail fees, court costs, and other fees could be delayed or may be ultimately waived and remitted by a judge.

Level	Category	Examples	Authority for Priority Ranking
1 (paid first)	Victim restitution	VRA and non-VRA restitution for victims	G.S. 7A-304(d)(1)
2	Costs due a county	Process fee; facilities fee; pretrial release fee; local lab fee; jail fees	G.S. 7A-304(d)(1)
3	Costs due a municipality	Process fee; facilities fee; local lab fee; jail fees	G.S. 7A-304(d)(1)
4	Fines due a county	Fines	G.S. 7A-304(d)(1)
5	Non-victim restitution	Restitution to entities other than a victim	G.S. 7A-304(d)(1)
6	Costs due the State	Telephone fee; law enforcement retirement fees; law enforcement training fee; GCOJ fee; Chapter 20 offense processing fee; FTA fee; FTC fee; SBI lab fee; witness fees; installment fee; probation supervision fee	G.S. 7A-304(d)(1)
7	Attorney fees and the attorney appointment fee	Attorney fees (and other expenses of indigent representation) and the attorney appointment fee	G.S. 7A-304(d)(1)
8 (paid last)	Costs associated with a substance abuse monitoring program or any other special condition of probation	CAM fee; EHA fee; community service fee; SBM fee	G.S. 15A-1343(b)

In the table above, Section 3 would delete the priority order for items in Level 8. This would shift the EHA fee, community service fee, and SBM fee to Level 6 (costs due the State), and remove any reference to priority order for the CAM fee, which is paid to a private vendor.

**Section 4:**

This section amends G.S. 15A-1343(b1) to allow a court to require as a special condition of probation that a defendant abstain from alcohol consumption and submit to CAM when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

**Judicial Branch Impact:** Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

**Section 5:**

This section amends G.S. 15A-1343.2(f) to allow the Division of Community Corrections in the Department of Correction to require an offender sentenced to intermediate punishment to submit to substance abuse treatment through a CAM program when abstinence from alcohol consumption has been specified as a term of probation.

**Judicial Branch Impact:** Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

**Section 6:**

This section adds new G.S. 15A-1343.4 to allow judges, in their discretion, to require offenders to abstain from the use of alcohol and to submit to CAM systems as a condition of pretrial release or probation in a matter before a Drug Treatment Program Court.

**Judicial Branch Impact:** In the event that an order for the use of CAM leads to an increase in violations, there could be an increase in hearings and impact workload for court personnel.

**Section 7:**

This section amends G.S. 20-28(a) to allow a judge to order an offender who is subject to a license revocation due to an impaired driving offense to abstain from alcohol consumption and submit to CAM for a minimum period of 90 days instead of incarceration.

**DOC Impact:** DOC looked at the FY 2009-2010 revoked offenders whose most serious offense was DWLR to see the number revoked for criminal reasons who had a conviction for DWI recorded in OPUS with an offense date or conviction date within 60 days of their revocation date.

**Most Serious DWI Offenses for DWLR Revocation in FY 2009-2010**

NEW OFFENSE	OFFENDERS	PERCENT
DWI LEVEL 1	15	41.67
DWI LEVEL 2	5	13.89
DWI LEVEL 3	4	11.11
DWI LEVEL 4	2	5.56
DWI LEVEL 5	3	8.33
DWI DRIVING WHILE IMPAIRED	1	2.78
HABITUAL IMPAIRED DRIVING	6	16.67
<b>TOTAL</b>	<b>36</b>	<b>100</b>

Because the number of offenders who might be affected by Section 7 is estimated to be very low, the Department would not need additional resources to handle this provision.

**Judicial Branch Impact:** Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

**Section 8:**

Section 8 amends G.S. 20-179(g) to allow a judge to impose as a condition of special probation for a level one punishment for an impaired driving conviction that the defendant be monitored by a CAM system for a period of no less than 120 days after the defendant serves the 30-day term of imprisonment. The act allows the minimum term of imprisonment to be reduced to not less than ten days if a judge orders the defendant to submit to CAM as a condition of probation. The act also allows up to 60 days of pretrial monitoring to be credited against the 120-day monitoring requirement.

The section also amends G.S. 20-179(h) to allow a judge to suspend a term of imprisonment for a level two punishment for an impaired driving conviction if the defendant has abstained from consuming alcohol for at least 90 consecutive days, as verified by a CAM system. The act allows up to 60 days of pretrial monitoring to be credited against the 120-day monitoring requirement for probation.

In addition, the proposed legislation adds new provisions to G.S. 20-179 to: (1) allow a judge to require a defendant convicted of any level of offense for impaired driving to abstain from alcohol consumption and submit to CAM as a condition of probation; and (2) allow a probation officer, with a judge's authorization, to require a defendant to submit to CAM if the defendant has been

required to abstain from alcohol consumption during probation and impose the costs of monitoring on the defendant.

**DOC Impact:** According to the Sentencing Commission, the impact of revocations on the prison population is likely to be minimal because DWI is a misdemeanor. As such, revocation would not often lead to incarceration in prison. Revocations would primarily have an impact on the local jail population.

**Judicial Branch Impact:** New subsection (k2) permits a judge to order as a condition of special probation for any Level of DWI offender to abstain from alcohol consumption, as verified by a continuous alcohol monitoring system. This would expand the pool of eligible DWI offenders from 10,154 offenders to 41,682 offenders. Since the alcohol recovery process may include relapse, it is likely that the use of continuous alcohol monitoring would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 8 also removes the cap of \$1,000 as the maximum costs a DWI offender must pay for CAM. This change, in conjunction with the change in Section 3, has the potential to reduce State and local government revenue. In addition, there is the potential for increased probation violation hearings for failure to pay all monies owed. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

This section also removes the requirement that payments by the defendant for CAM be paid to the Clerk of Court for transmission to the entity providing the CAM system. Thus, it appears that the defendant would pay the entity directly, and may pay the CAM entity prior to making payments on amounts due on the criminal judgment, such as restitution, fines, and court fees.

#### **Section 9:**

This section amends G.S. 50-13.2 to allow a court to impose as a condition of an order for custody, including visitation that either or both parents, or other persons seeking custody or visitation, abstain from consuming alcohol and submit to CAM.

**Judicial Branch Impact:** Section 9 is anticipated to significantly impact the time required for child custody and visitation hearings. In 2010, AOC data show 18,003 civil cases with a custody issue and 4,834 cases with a visitation issue. Because there may be some overlap between the two groups, for the purposes of this analysis AOC has used only the 18,003 custody cases as a starting point. It is estimated that in approximately 60 percent of those cases, a request for CAM will be made during the hearing for permanent custody, adding an estimated 30 minutes to those hearings. In addition, it is estimated that roughly half of those cases, or 30 percent of the overall custody cases, will first have the issue raised at a temporary custody hearing, adding another 15 minutes to those hearings. With a December 1 effective date, costs would be as follows:

Position Type	Positions	Position Cost				FY2011-12 (Eff. Dec 1)			FY2012-13	FY2013-14	FY2014-15	FY2015-16
		Salary	Soc Sec	Retirement	Health	R	NR	Total	Total	Total	Total	Total
<b>Inflation*</b>								<b>0.00%</b>	<b>8.87%</b>	<b>8.68%</b>	<b>6.64%</b>	<b>5.24%</b>
District Court Judge	5	\$546,860	\$41,045	\$109,430	\$24,645	\$421,155	\$48,265	\$469,420	\$786,020	\$854,246	\$910,968	\$958,703
Deputy Clerk*	5	\$139,440	\$10,670	\$14,660	\$24,645	\$110,492	\$13,100	\$123,592	\$206,216	\$224,116	\$238,997	\$251,520
<b>Subtotal Court Personnel</b>	<b>10</b>							<b>\$593,012</b>	<b>\$992,236</b>	<b>\$1,078,362</b>	<b>\$1,149,965</b>	<b>\$1,210,223</b>
<b>Inflation**</b>								<b>0.00%</b>	<b>3.05%</b>	<b>2.99%</b>	<b>2.47%</b>	<b>2.49%</b>
Operating								\$72,301	\$127,725	\$131,544	\$134,793	\$138,150
<b>Grand Total</b>								<b>\$665,313</b>	<b>\$1,119,961</b>	<b>\$1,209,906</b>	<b>\$1,284,758</b>	<b>\$1,348,373</b>

\* Positions were inflated based on the Moody's economy.com inflation rate estimates for salaries and wages (Jan. 2011).

\*\*Operating expense inflation estimates based on consumer price index projections provided by Moody's economy.com (Jan. 2011)

Under Section 9 there is also the potential for an increase in civil or criminal contempt proceedings, which would also require court personnel time.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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