

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 494 (Third Edition)

SHORT TITLE: Continuous Alcohol Monitoring Law Changes.

SPONSOR(S): Representatives M. Alexander, Guice, T. Moore, and Stam

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUE:					
					<i>*See Assumptions and Methodology*</i>
EXPENDITURES:					
Correction					<i>*See Assumptions and Methodology*</i>
Probation					<i>*See Assumptions and Methodology*</i>
Judicial					<i>*See Assumptions and Methodology*</i>
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: December 1, 2011					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The proposed legislation amends the definition of intermediate punishment by adding a new condition of abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring (CAM) system approved by the Department of Correction (DOC) when alcohol dependency or chronic abuse has been identified by a substance abuse assessment. The bill also amends the DWI punishment levels, by adding conditions by which a judge may suspend a sentence. The act becomes effective December 1, 2011, and applies to offenses committed or any custody and visitation orders issued on or after that date.

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.

Section 3: Currently, G.S. 15A-1340.11(6) provides that an intermediate punishment is a sentence in a criminal case that places an offender on supervised probation and includes at least one of six conditions. This bill adds a seventh option to the list: abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring (CAM) system approved by the Department of Correction when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

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 this 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.

Section 5: Currently, G.S. 15A-1343(b1) provides that in addition to the regular conditions of probation, the court may, as a condition of probation, require that during the probation the defendant comply with one or more special conditions of probation. This bill adds a new option to the list of special conditions of probation: abstinence from alcohol consumption and submission to CAM when alcohol dependency or chronic abuse has been identified by a substance abuse assessment. By adding this special condition, the scope of probation and the possibility of revocation are expanded.

The proposed amendment to G.S. 15A-1343(b1) would not be expected to increase or decrease the number of convictions that receive probation. Rather, the proposed bill provides judges with an additional special condition of probation. Because this bill applies to probation, 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.

Section 10: The bill also amends the Level One and Level Two DWI Punishments provided for in G.S. 20-179(g) and (f) by adding continuous alcohol monitoring to each subsection as a condition under which a judge may suspend an offenders' sentence.

The Sentencing Commission does not maintain statistical information on impaired driving offenses, because they are not punished under the Structured Sentencing Act. 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.

According to DOC, there is no data in OPUS regarding the number of offenders who may have pretrial credit for CAM, or how it would affect the time monitored while on probation or the length of an imposed split sentence. Further, since discretion of the judge and/or probation officer is the key to the provision's application, DOC cannot estimate the impact. Even so, DOC would not anticipate a large fiscal impact of any of the proposed legislation, provided the offender pays the cost of the CAM.

Judicial Branch

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: 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.

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 is specific to pretrial release for offenders of domestic violence and allows the judge to require the defendant abstain from alcohol consumption, as verified by a CAM device. Any violations of this condition must be reported to the district attorney by the monitoring provider. AOC reports this provision will increase workload to the district attorneys.

Section 3: Section 3 adds another option for an intermediate sanction, which may be used in lieu of or in addition to the existing intermediate sanctions. 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 4: The act amends G.S. 115A-1343(b) and now allows defendants to pay monitoring fees prior to other payments to the court or other amounts due. Current law prohibits monitoring costs to be paid prior to or instead of other fees, such as child support, supervision fees, court costs, fines or court-appointed counsel fees. This section may reduce the collection of fines and fees by the Judicial Branch.

Removing the language in G.S. 15A-1343 has the potential to impact State and local government revenues. The fee for CAM is \$12 per day. With a maximum period of 120 days, this translates into up to \$1,440 in CAM fees paid to the vendor by an offender. Since under the proposed bill these payments could be made first, 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 4 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 5: Section 5 adds another option for special condition of probation. 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: The bill authorizes a probation officer to require CAM if alcohol dependency or chronic abuse has been identified and if that person is on intermediate probation. This can be done without a court hearing as long as the court as not previously found by specific findings that this special condition is inappropriate.

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 7: The proposed legislation mandates an offender using CAM to pay fees directly to the vendor. The provider must get the court's permission prior to terminating an offender for non-payment. This section will require additional court time for such petitions and hearings.

Section 8: The act grants authority to a drug treatment court judge to require a defendant submit to continuous alcohol monitoring.

In the event that an order for the use of CAM leads to an increase in violations, there could be an increase in hearings, impacting workload for court personnel.

Section 9: Section 9 authorizes a judge to require, as condition of special probation, abstinence of alcohol and continuous alcohol monitoring for a minimum of 90 days if the defendant is convicted of driving while license revoked if the revocation is for a charge of driving while impaired.

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

Section 10 also removes the cap of \$1,000 as the maximum costs a DWI offender must pay for CAM. AOC reports that this change, in conjunction with the change in Section 4, 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 11: Section 11 amends G.S. 50-13.2 is amended to add a new subsection to allow for any custody and visitation order under this statute to include a provision requiring either party to abstain from alcohol use and submit to continuous alcohol monitoring. Any order made pursuant to this section with the new authorized sections, shall include an order to the monitoring provider

to report any violation to report any violation to the court and each party to the action. Failure to comply with this condition shall be grounds for civil or criminal contempt. This section will lengthen certain custody and visitation hearings wherein alcohol use is an issue. Additionally, it will increase the number of contempt hearings necessary in these cases.

Section 11 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 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
Inflation*								0.00%	8.87%	8.68%	6.64%	5.24%
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
Subtotal Court Personnel	10							\$593,012	\$992,236	\$1,078,362	\$1,149,965	\$1,210,223
Inflation**								0.00%	3.05%	2.99%	2.47%	2.49%
Operating								\$72,301	\$127,725	\$131,544	\$134,793	\$138,150
Grand Total								\$665,313	\$1,119,961	\$1,209,906	\$1,284,758	\$1,348,373

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

AOC Technology Services Division estimates a cost of approximately \$211,400 in programming time for modifying the ACIS, CCIS-DA, and NCAWARE to comply with the provisions of this bill. The cost detail is shown in the table below.

Description of Task	ACIS Hours	CCIS-DA Hours	NCAWARE Hours	Total	COST*
Research & Analysis	100	100	200	400	\$28,000.00
Programs/Screens	150	150	300	600	\$42,000.00
JCL Changes	30	30	60	120	\$8,400.00
Database/File Changes	50	50	100	200	\$14,000.00
Programmer Testing	75	75	150	300	\$21,000.00
Documentation	100	100	200	400	\$28,000.00
BSA Testing/Impl. Doc.	200	200	400	800	\$56,000.00
Migration	50	50	100	200	\$14,000.00
Total Estimate:	755	755	1510	3020	\$211,400.00

* Cost is based on \$70.00/hour contractor rate.

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

TECHNICAL CONSIDERATIONS: None

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