

Criminal Law Update: The Expansion of Continuous Alcohol Monitoring

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1. Applicability: December 1, 2012

- (a) The expanded authorization for continuous alcohol monitoring (hereinafter “CAM”) addressed herein is applicable to **offenses committed on or after December 1, 2012.**

2. Pretrial Release: Any Criminal Offense

- (a) Abstinance from alcohol consumption as verified by CAM may be required as a condition of pretrial release for **any criminal offense**. G.S. 15A-534(a).
 - (i) The new statutory scheme repeals the former G.S. 15A-534(i), which authorized CAM only for certain impaired driving offenses.
 - (ii) G.S. 15A-534.1 (**domestic violence offenses**) was also amended to authorize a judge to impose abstinence from alcohol/CAM.
- (b) Any pretrial CAM violation **must** be reported by the provider to the District Attorney.

3. Probation: Repeat After Me ... “Any Criminal Offense”

- (a) By the Court: As a condition of probation, the court may order abstinence from alcohol/CAM **when alcohol dependency** or chronic abuse **has been identified by a substance abuse assessment**. G.S. 15A-1343(a1)(4a); G.S. 15A-1343(b1)(2c).
- (b) By the Probation Officer: When an offender receives an intermediate punishment and abstinence from alcohol consumption has been specified as a condition of probation, the probation officer can require the offender submit to CAM.
- (c) Payments: Probationers pay fees directly to the monitoring provider. Provider is prohibited from terminating CAM for non-payment without court authorization. G.S. 15A-1343.3(b).

4. Driving While License Revoked: Beware Impaired Driving Revocations

- (a) At sentencing, the court may order abstinence from alcohol/CAM for a minimum period of 90 days **if** the person’s license **was originally revoked for an impaired driving revocation**. G.S. 20-28.

5. Driving While Impaired: Broad Expansion

- (a) “Any level of punishment”
 - (i) Under current G.S. 20-179 (**pre 12/1/12 offenses**), CAM is **required** as a condition of probation for an Aggravated Level One sentence (G.S. 20-179(f3)) and **authorized** as a condition of probation for Level One and Two punishment (G.S. 20-179(h1)). CAM is **not authorized** for Level Three, Four, or Five punishment.

- (ii) New G.S. 20-179(k2) (**post 12/1/12 offenses**) authorizes the court to require abstinence from alcohol/CAM for **any level of punishment**.

- (b) Amended Mandatory Punishment for Level One and Two Sentences
 - (i) Level One Sentencing
 - (1) Judge may reduce the minimum term of imprisonment to **10 days** if the judge imposes as a condition of probation that the defendant abstain from alcohol consumption for at least 120 days as verified by CAM. G.S. 20-179(g).
 - (2) Note – If a defendant avails herself to CAM before trial, up to 60 days of pretrial monitoring may be credited against the 120 day monitoring requirement for probation.

 - (ii) Level Two Sentencing
 - (1) Judge may **completely suspend the term of imprisonment** (*i.e.*, there is no mandatory term of imprisonment) if the judge imposes as a condition of probation that the defendant abstain from alcohol consumption for at least 90 days as verified by CAM. G.S. 20-179(h).
 - (2) Note – Similarly, if a defendant avails herself to CAM before trial, up to 60 days of pretrial monitoring may be credited against the 90 day monitoring requirement for probation.

- (c) Limitation on a judge requiring CAM
 - (i) Judge **may not impose CAM** under 20-179(g), (h), (k2), and (k3) (the new and amended subsections) **if she finds good cause for not requiring the defendant to pay the costs of CAM except** if “the local governmental entity

responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system. G.S. 20-179(k4).

6. Custody Cases and CAM

- (a) Any custody or visitation order **issued on or after December 1, 2012**, may require either or both parents to abstain from consuming alcohol and to submit to CAM for verification of compliance. G.S. 50-13.2(b2).
- (b) Failure to comply is grounds for civil or criminal contempt.