



North Carolina Department of Correction

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Michael F. Easley
Governor

Theodis Beck
Secretary

MEMORANDUM

TO: Senator Charles W. Albertson
Senator Charlie S. Dannelly
Senator Linda Garrou
Senator Edward W. Jones
Senator Eleanor Kinnaird
Senator John J. Snow, Jr.

Representative Alma S. Adams
Representative Martha B. Alexander
Representative Alice L. Bordsen
Representative James W. Crawford, Jr.
Representative R. Phillip Haire
Representative Margaret M. Jeffus
Representative Jimmy L. Love, Sr.
Representative Henry M. Michaux, Jr.
Representative Joe P. Tolson
Representative Douglas Yongue

FROM: 
Tracy A. Little, Deputy Secretary

RE: Legislative Report on Continuous Alcohol Monitoring
(S.L. 2007-165)

DATE: October 21, 2008

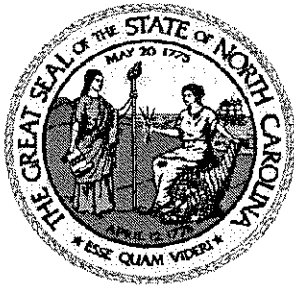
Pursuant to Session Law 2007-165, please find attached the Department of Correction's Legislative Report on Continuous Alcohol Monitoring.

Department of Correction staff members are available if further information is requested.

TAL:ea

Attachment

cc: Aaron Gallagher
Doug Holbrook
John Poteat



Division of Community Corrections
**LEGISLATIVE REPORT ON
Continuous Alcohol Monitoring**

October 1, 2008

Michael F. Easley
Governor

Robert Lee Guy
Director

Theodis Beck
Secretary

Session Law 2007-165***Section 8***

SECTION 8. The Department of Correction shall report to the Chairs of the House of Representatives and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2008, on the following:

- (1) The Department's evaluation of continuous alcohol monitoring systems as evidence of an offender's abstinence from alcohol.
- (2) The results of the Requests for Information issued in the 2007-2008 fiscal year for continuous alcohol monitoring of offenders supervised by the Division of Community Corrections.
- (3) The Department's recommendations for implementing continuous alcohol monitoring, including:
 - a. An evaluation of the costs and benefits of alcohol monitoring technology.
 - b. The size and characteristics of the offender population and the proposed number of offenders to be monitored.
 - c. The contractual and internal costs of the monitoring program.
 - d. The proposed caseloads for probation officers who would supervise offenders using continuous alcohol monitoring technology.
 - e. Whether the State should conduct a pilot program for continuous alcohol monitoring in limited jurisdictions or statewide.

The Department shall also explore funding options through grants and other sources, including the possibility of charging a fee to offenders to partially offset the costs of the program. The Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on any funds identified.

I. Evaluation of Continuous Alcohol Monitoring Systems (CAM)

Session Law 2007-165 requires the Department of Correction (“DOC”) to establish regulations for continuous alcohol monitoring systems to be used by the courts as evidence that an offender on probation has abstained from the use of alcohol for a specified period of time. The law defines a continuous alcohol monitoring system as “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.”

Historically, the Division of Community Corrections (DCC) has used a combination of breath and urine screening technology devices to screen offenders for the presence of alcohol. The use of these traditional screening methods requires the probation officer to personally administer the screen. The screenings occur randomly or based on suspicion of use, dependent on the conditions of supervision. The Division traditionally has funded alcohol screening within the department/division budget, with the equipment or screening devices obtained through the traditional bid process.

During the past several years, technological advances have occurred that incorporated the use of perspiration or transdermal alcohol content measurement and a wearable ankle transmitter device to provide continuous alcohol monitoring (“CAM”) for the presence or absence of alcohol. These devices are similar to traditional electronic monitoring equipment in appearance and operation, but do not require an officer to administer the screening. CAM devices monitor for the presence of alcohol as measured through perspiration, as alcohol is excreted from the body through sweat. The devices sample on a continuous basis from every 30 minutes to every hour throughout the day, storing the results and then using telephone or cellular communication to send the information into a central monitoring station at various times each day. When the presence of alcohol is detected, the device provides notification to the service provider’s computer monitoring operation. The service provider then analyzes the result and provides notification to designated agency personnel of a verified alcohol event.

Session Law 2007-165 directed DOC to approve CAM systems for use by the courts as evidence of alcohol abstinence. DOC subsequently began a review of the CAM technology and associated research, including reviews from the University of Colorado; the United States Department of Justice, National Institute of Justice Law Enforcement and Corrections Technology Center-Northwest; the Michigan Department of Correction; and the Traffic Injury Research Foundation. As a result of the review, DOC approved the use of CAM technology in December of 2007 and implemented CAM protocols.

Since the approval of the protocol, only one CAM provider, Alcohol Monitoring Systems Inc., through local service provider Rehabilitation Support Services LLC, has applied and been approved for CAM service delivery in the state. From January 2008 through August 2008, DCC was responsible for the supervision of 43 offenders with a CAM requirement as a condition of supervision. While the law authorizes CAM for use with a Level I or II DWI offender, the courts have utilized it for offenders with other convictions as well; 26 of the 43 offenders had a conviction for DWI. DOC’s review of the CAM technology indicated that the CAM method is reliable in detecting the presence of alcohol, but not necessarily the degree of intoxication.

Twenty judicial districts have supervised offenders with a CAM requirement as of August 2008. DCC asked probation officers from these districts to complete a brief survey concerning their experiences with the use of CAM technology. With 35 employees responding, the survey indicated that most officers found CAM to be effective in measuring alcohol use and in assisting offenders with abstinence. The survey also indicated that most of the officers recommend that CAM be available to use for any offender with an alcohol addiction, and not limited by the criminal offense or punishment level, and that CAM be used for a minimum period of 90-120 days. In addition, the officers suggested that some mechanism be put in place to allow offenders who lack the ability to pay for CAM technology to benefit from the technology.

II. Results of the Request for Information

Pursuant to S.L. 207-165, DOC issued a Request for Information (RFI) in January 2008 soliciting information concerning the most up-to-date, cost-effective CAM technology available. Three providers responded to the RFI, including Alcohol Monitoring Systems Inc. Another of the respondents provides a visual breath monitoring technology instead of the perspiration-based sensors, and screens on a scheduled, random or upon demand basis as opposed to hourly or every 30 minutes. Based on the RFI information, the cost per offender per day for the use of the technology could range from \$4 to \$12 for each offender.

Currently, DCC has issued a Request for Proposal (RFP) for its electronic monitoring technology; the deadline for requests is October 14, 2008. The proposal includes DCC's equipment for the traditional electronic house arrest (EHA) program, global positioning satellite (GPS) tracking technology and continuous alcohol monitoring technology. Although the General Assembly currently provides funding for the use of EHA and GPS, DCC opted to include the CAM technology in the RFP in case state funding becomes available for use of the technology.

III. Recommendations for Implementing Continuous Alcohol Monitoring

a. Evaluation of the costs and benefits of alcohol monitoring technology

The approved CAM provider is responsible for the installation of the device, maintenance and monitoring. Once installed, the CAM service provider contacts the supervising probation officer with notification of any alcohol events or other problem issues. Because the state has not appropriated funding for the use of CAM technology, the offender is responsible for paying the costs of CAM monitoring. The offender pays the fee to the clerk of court, who forwards payment to the service provider. This offender pay model, as well as the technology - vendor/provider approval process, is unique in that other technologies used to aid with offender supervision, i.e. EHA and GPS follow the traditional bid process with state funding provided for use. The current provider charges the offender a one-time installation fee of \$75 and then a \$12 per day cost, which amounts to \$360 per month for CAM monitoring. By comparison, an offender pays a one-time fee of \$90 for EHA or GPS monitoring and no monthly fee. Because the

General Assembly recognized that \$360 can be a significant amount for certain offenders, the General Assembly limited the amount of time an offender can be monitored with CAM to 30-60 days.

CAM is used as a supervision tool that monitors alcohol use and thereby helps the officer enforce conditions of supervision related to abstinence. CAM in effect replaces the traditional screening methods used to detect the use of alcohol. Benefits include continuous monitoring for alcohol use without officer intervention to administer a screen. This allows the officer to focus more time on offender case management, risk management, and quality offender contact. Although the current use of CAM imposes little additional cost to the state (costs are the supervision of the offender, which would occur regardless of the existence of CAM), the current offender pay model limits the use of CAM to the offenders who can afford the cost, which creates concerns about equal justice for all offenders. The use of other technologies such as EHA and GPS is not based on the offender's ability to pay and is applied regardless of socioeconomic status.

DCC's experience with CAM to date is limited to a small number of offenders, but the results seem to indicate that the technology can be an effective tool to monitor alcohol use and abstinence. While DCC cannot draw definitive conclusions at this point, the Division is optimistic that CAM technology will continue to prove a worthy tool for probation officers.

b. *Size and characteristics of the offender population and proposed number of offenders to be monitored*

The use of CAM is authorized for Level I and II DWI offenders. Of the 43 offenders monitored with CAM through August 2008, 26 were convicted of a Level I or II offense. As of September 1, 2008, DCC was responsible for the supervision of more than 21,000 offenders with a DWI offense; 10,621 of those offenders had committed a DWI Level I or II offense. The 2008 DWI Substance Abuse Services Report by the Department of Health and Human Services indicated that 84 percent of assessed DWI offenders required treatment for substance abuse; 30 percent experienced substance abuse dependence; and 35 percent were repeat offenders. In addition to DWI offenders, other offenders under supervision also struggle with alcohol abuse issues.

Ironically, the condition of supervision requiring no consumption of alcohol or abstinence is not an automatic requirement for a DWI conviction. While abstinence is a required condition of supervision for the period of CAM, abstinence is not necessarily required afterwards. Of the 10,621 offenders under supervision for a Level I or II conviction, only 12 percent have a condition of supervision that prohibits the consumption of alcohol and only eight percent of all DWI levels have such a condition.

c. *The contractual and internal costs of the monitoring program*

The RFI indicates that the contractual costs for the CAM equipment, monitoring, and notification to the agency would range somewhere from \$4 to \$12 per day. Exact costs can not be determined without completion of the bid process. In addition, the internal

cost of supervision for an offender is approximately \$2.37 per day (based on FY 2007-08 costs).

- d. *Proposed caseloads for probation officers who would supervise offenders using CAM*
DCC does not designate a specialization for the supervision of CAM offenders. Any officer across the state with an offender on the caseload with CAM requirements can provide the supervision. The officer provides supervision of the offender and works with the CAM provider to ensure appropriate use of the technology and with the treatment provider to aid in recovery. Based on the experiences to date, DCC recommends a continuation of this approach and does not recommend specialization tied to a reduced caseload expectation.
- e. *Whether the state should conduct a pilot program for CAM in limited jurisdictions or statewide*
If the General Assembly decides to continue use of CAM, DCC recommends a state-funded pilot in two or three jurisdictions to better study the effectiveness and use of CAM. The selection of offenders should be based on the results of an assessment, with the technology available to any offender--regardless of criminal offense or ability to pay. The pilot should follow the traditional bid process for technology and provider selection to ensure that the state receives the best value.

IV. Funding Options Review

The offender currently bears the cost of CAM; those costs include a one-time \$75 installation fee and a cost of \$12 per day. Excluding the installation fee, the monthly cost for CAM is approximately \$360 per offender. Because of reduced opportunities for grant funding, DCC could identify few grant options to identify alternative funding sources for the use of CAM technology. Although the approved CAM vendor presented information to the Governor's Crime Commission in June 2008 about the technology, the Commission has not designated its 2009 funding priorities.

At least one county has decided to fund its own pilot. In August, the Mecklenburg County Manager approved funding for a six-month pilot in Mecklenburg County. The funding is to be used to offer CAM use for up to 100 lower-income offenders who cannot afford to pay the current CAM costs and for whom the court deems CAM to be appropriate. However, given the current economic situation, it is unlikely that many other counties have sufficient resources to provide similar funding.

Summary

If the General Assembly continues the use of CAM as a condition of offender supervision, DCC has several recommendations to enhance the effective use of the technology. First, the decision to use the technology should be directly tied to the results of a clinical substance abuse assessment. G.S. 15A-1343(b3) requires that participation in the Drug Alcohol Recovery Treatment Program (DART) be based on an assessment of chemical dependence; the Division recommends that participation in CAM be based on the same requirement. Second, CAM should

be available for any offender, regardless of the criminal offense conviction. Offenders convicted of crimes other than DWI also have significant substance abuse issues and could benefit from use of CAM technology. Third, offenders should be prohibited from consuming alcohol as a condition of supervision both during and after the CAM supervision period. Finally, the use of CAM monitoring should be available to all offenders when warranted, regardless of their ability to pay.