

Electronic House Arrest

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Categories : [Sentencing](#), [Uncategorized](#)

Tagged as : [EHA](#), [electronic house arrest](#), [house arrest](#), [probation](#), [Sentencing](#), [structured sentencing](#)

Date : April 8, 2014

Today's post covers some of the nuts and bolts of electronic house arrest (EHA). EHA is fairly self-explanatory: in lieu of traditional incarceration, a person is confined to his or her residence by way of an electronic monitor that signals authorities if he or she departs. The focus here is on EHA as a component of a criminal sentence, not as a condition of pretrial release, although the same technology may be used for that purpose.

Legal background. House arrest with electronic monitoring is a defined term under Structured Sentencing. Under [G.S. 15A-1340.11\(4a\)](#), it is probation in which a person is required to remain at his or her residence. The court may authorize the person to leave for certain purposes (work, education, or treatment, for example), and a probation officer may authorize the person to leave for other purposes not mentioned by the court with the approval of a chief probation officer. There are actually two statutory conditions that mention EHA—the statutory special condition set out in [G.S. 15A-1343\(b1\)\(3c\)](#) and the “community and intermediate” condition set out in [G.S. 15A-1343\(a1\)\(1\)](#)—but there's no apparent substantive distinction between the two.

For offenses committed before December 1, 2011, EHA was an “intermediate” sanction under [G.S. 15A-1340.11\(6\)](#), meaning it could be imposed only as part of an intermediate sentence. That distinction was repealed for offenses committed on or after December 1, 2011, meaning EHA may now be imposed as part of any probationary sentence. Electronic house arrest is also one of the sanctions a probation officer may add without prior court approval through delegated authority. [G.S. 15A-1343.2\(e\)](#) (for community cases); [15A-1343.2\(f\)](#) (for intermediate cases).

There is no statutory time limit on how long a probationer may be ordered to EHA; in theory a person could be placed on EHA for every day of a five year probationary term. However, [probation policy](#) (§ .0303A(b)(4)) recommends that a period of EHA not exceed 120 days.

Technology. An electronic device monitors an offender's compliance with EHA. No specific device is required by law, but under [G.S. 15A-101.1\(3a\)](#), any “electronic monitoring” mentioned in Chapter 15A must be done with a device that is not removed from a person's body that actively monitors, identifies, tracks, and records a person's location at least once every minute 24 hours a day, with a battery life of least 48 hours. The Division of Adult Correction contracts with a company called BI Incorporated for its electronic monitoring needs. The particular device used in North Carolina is called the BI ExacuTrack® One (with [general information](#) and [technical specs](#) available online). DAC uses the exact same device for electronic monitoring curfews and satellite-based monitoring of sex offenders.

Cost. A person placed on EHA as a condition of probation must pay a one-time \$90 fee and, as of last September, a “daily fee in an amount that reflects the actual cost of providing the electronic monitoring.” [G.S. 15A-1343\(c2\)](#). As of now that daily cost is set at \$4.37. (The daily cost of EHA listed on the [N.C. Department of Public Safety website](#) is \$9.83, but that number probably includes some accounting of the probation officer's time in addition to the cost of the device itself.) In a judgment imposing EHA, the court should multiply the number of days that the defendant will be subject to EHA by \$4.37, add \$90, and include that amount as the EHA fee on the judgment. The court may exempt a person from paying the EHA fee “only for good cause and upon motion of the person placed on house arrest.” [G.S. 15A-1343\(c2\)](#). Because the EHA fee is not listed in [G.S. 7A-304](#), it probably does not require a written finding of “just cause” to reduce or remit it for a particular defendant.

Enforcement. A willful failure to abide by EHA obviously is a violation of probation. Any person who removes, destroys, or circumvents the operation of an EHA device, or solicits another person to do it, also commits a crime under [G.S. 14-226.3](#). The offense class of the crime depends on the class of offense for which the person is being monitored: interference with the equipment is a crime one offense class lower than the most serious felony or misdemeanor for which the person is under supervision (a violation by a Class I felon is a Class A1 misdemeanor).

Credit for confinement. Time spent subject to EHA does not qualify for credit under [G.S. 15-196.1](#). *State v. Jarman*, 140 N.C. App. 198 (2000). That statute is limited to time spent in any “State or local correctional, mental, or other institution,” and a person’s house is not one of those.

Along similar lines, a judge may not commit a person to a residence for service of a sentence of imprisonment. The DWI law used to include a provision allowing a split sentence to be served via house arrest, but that was repealed in 1997. [S.L. 1997-379](#). Likewise, a sheriff may not allow a person committed to his or her custody for a term of imprisonment to serve the sentence on house arrest. The sheriff has some discretion in identifying a person’s place of confinement, but it must ultimately be a place designated by law for such confinement and approved by the Department of Health and Human Services. [G.S. 162-56](#). In general, no person should be imprisoned except in the common jail of the county, unless otherwise provided by law. [G.S. 15-6](#). With that in mind, house arrest should not be used as a substitute for incarceration. See 59 N.C. Op. Atty. Gen. (1989) (concluding that DWI split sentences could not be served through EHA before enactment of the authorizing provision in G.S. 20-179 noted above).