

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 594
 Judiciary

(Delegate McDermott, *et al.*)

Criminal Procedure - Tier III Sex Offenders - Tracking Device as a Condition of Probation and for Life After Release from Custody

This bill requires a Tier III sex offender to register for “electronic tracking” with the Department of Public Safety and Correctional Services (DPSCS).

Fiscal Summary

State Effect: General fund expenditures increase by \$19.6 million in FY 2012. Out-year costs reflect annualization and inflation. General fund revenues increase by \$5.9 million in FY 2012 and increase by about 1% annually. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$5,863,700	\$5,922,400	\$5,981,600	\$6,041,400	\$6,101,800
GF Expenditure	\$19,618,200	\$25,609,700	\$26,224,600	\$26,866,600	\$27,537,400
Net Effect	(\$13,754,500)	(\$19,687,400)	(\$20,243,000)	(\$20,825,200)	(\$21,435,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Any responsibilities for local law enforcement agencies would be addressed via contracts with DPSCS. It is assumed that any additional workload for the courts would be handled with existing budgeted resources.

Small Business Effect: Potential meaningful for any global positioning systems (GPS) equipment contractor successful in providing hardware and related services.

Analysis

Bill Summary: Under the bill, the person must wear an “electronic tracking device” at all times after release from the custody of a supervising authority and for the period of time that registration as a sex offender is required. An electronic tracking device (ETD) must be able to monitor the person 24 hours a day so that the location of the person can be determined at any time.

This bill requires a court to order a person convicted of a Tier III sexual offense, as a condition of probation, to register for electronic tracking by DPSCS. The court may also specify, as a condition of probation, geographic location to which the defendant may not travel.

DPSCS must develop procedures to determine, investigate, and report noncompliance, immediately investigate a report of noncompliance, and contract local law enforcement agencies to assist in locating and apprehending noncompliant trackees. DPSCS must also establish a reasonable fee for the cost of electronic tracking and collect the fee from each trackee ordered to wear an ETD. If DPSCS determines that the person is unable to pay the fee, a whole or partial exemption from the fee requirement may be granted.

A trackee may not knowingly: (1) fail to register with DPSCS; (2) fail to wear an ETD provided by DPSCS; or (3) alter, tamper with, damage, or destroy an ETD provided by DPSCS. A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Current Law and Background: The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. These laws have become popularly known as either “Megan’s Law” or “Jessica’s Law” in memory of children who have been sexually assaulted and murdered by convicted sex offenders.

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), conditioned receipt of federal grant assistance on conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk of losing 10% of Byrne Justice Assistance grants, which all states use to pay for crime fighting efforts including drug task forces, anti-gang units, police overtime, and other law enforcement activities.

In 2010, Maryland's sex offender registration laws were substantially revised in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. A sex offender is required to register in each county where the offender habitually lives. The term "habitually lives" includes any place where a person visits for longer than five hours per visit more than five times within a 30-day period. A sex offender who is homeless is required to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county.

Sex offender registration provisions are applied retroactively to a person who is under the custody and supervision of a supervising authority on October 1, 2010; was subject to registration on September 30, 2010; or is convicted of any crime on or after October 1, 2010, and has a prior conviction for an offense for which sex offender registration is required. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

Lifetime Supervision

Lifetime supervision of the following sexual offenders is required for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child younger than the age of 12;
- a person required to register with the person's supervising authority because the person was at least 13 years old but not older than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

A person subject to lifetime supervision is prohibited from knowingly or willfully violating the conditions of the supervision, with possible imprisonment and/or monetary fines as sanctions. The sentencing court must hear and adjudicate a petition for discharge

from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision must hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act on the matter.

The sentencing court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. Allowable special conditions, including global positioning satellite tracking or equivalent technology and required participation in a sexual offender treatment program, are cited in statute. A victim or a victim's representative must be notified of hearings relating to lifetime sexual offender supervision.

Probation

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family. A judge may also order "custodial confinement," which usually refers to home detention or in-patient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment.

The most commonly recognized electronic tracking device, a Global Positioning System (GPS), uses data obtained from multiple satellites to determine the location of an object at any given time.

The risk level of every sexual offender is determined through the use of the Static-99, a specialized risk assessment instrument, and offenders are reassessed at 90-day intervals using the Acute-2000, another specialized instrument. All sexual offenders are initially supervised at the highest level – which includes weekly face-to-face contacts, daily telephone contact, mandatory risk-based treatment referrals, and at least monthly verification of residence, treatment, and supervision condition compliance, as well as compliance with registration requirements. Offenders are moved to lower supervision levels only on the basis of consistent successful compliance with all requirements and satisfactory risk assessment scores.

DPP advises that GPS technology may signal false alerts whenever the offender's GPS device loses even momentary contact with the satellites that track the device (*e.g.*, when the offender enters an underground area such as a basement or tunnel). In order to prevent an extraordinarily high number of alerts, the exclusion zone is typically a minimum of 300-600 feet which means that the offender would trigger an alert if he or she were within one to two football fields' distance of a specified address. Anecdotally, DPP currently monitors approximately 219 offenders through "passive" GPS monitoring. During January 2011, DPP agents were responsible for investigating approximately 6,273 GPS violation alerts for those 219 offenders (only 77 of which are sexual offenders).

State Fiscal Effect: As of February 1, 2011, there were 6,168 Tier III sex offenders in the State. About 1,000 of them are still in prison. Passive GPS monitoring costs about \$6.00 per offender per day (\$2,200 per year) and active/constant monitoring costs about \$9.00 per offender per day (\$3,300 per year). These costs do not reflect expenses relating to additional personnel. It is assumed that the bill's electronic monitoring requirements will be assigned to DPP. This bill requires active/constant monitoring. Legislative Services notes that, under current law, not all offenders subject to lifetime registration are subject to lifetime supervision. The number of persons required to register for GPS tracking may grow by 100 to 200 persons per year.

Assuming active/constant monitoring costs of \$9.00 per day, the annual cost of monitoring 5,100 offenders via GPS devices alone is \$16.8 million. This amount assumes that tracking could be done with existing DPP staff and does not include any costs relating to contracts with local law enforcement agencies to "assist in the location and apprehension" of persons in noncompliance.

General fund expenditures increase by \$19.6 million in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring 128 correctional officers, 8 police communications operators, 1 certified trainer, 1 program manager, and 1 executive director to establish and operate a statewide electronic tracking program for Tier III sex offenders. It includes salaries, fringe

benefits, one-time start-up costs, automobiles, and ongoing operating expenses. This estimate is based on the following facts and assumptions:

- statewide coverage of an active electronic tracking program requires the establishment of a new unit within DPP;
- by establishing three eight-hour shifts at each location, the new unit would actively monitor and track Tier III sexual offenders in “real time;”
- the new unit can cover the State with 8 satellite offices; and
- it is assumed that the bill’s requirement to contract with local law enforcement agencies for the apprehension of trackees in noncompliance would be handled via memoranda of understanding with all 170 law enforcement agencies in the State for collaborative operations.

Position(s)	139
Salaries and Fringe Benefits	\$6,148,963
Automobile Purchases	208,000
GPS Devices	12,565,125
Other Operating Expenses	<u>696,140</u>
Total FY 2012 State Expenditures	\$19,618,228

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

DPP is required to establish and collect a reasonable fee from the trackees for the GPS monitoring service. Historically, DPP’s collection rate for the collection of supervision fees has been between 30% and 35% per offender. Assuming that fees assessed on all 5,100 offenders in year one would total \$16.8 million, a 35% collection rate would yield only \$5.9 million in actual collections. Legislative Services assumes a growth rate for actual collections of 1%, based on the growth in the number of Tier III registrants annually.

Additional Comments: DPP’s estimate of costs for the bill was considerably higher than this fiscal and policy note. The agency indicated that, in order to implement a 24-hour/7-day-a-week electronic monitoring program with the ability to detect noncompliance, DPP would have to create a new and specially trained electronic monitoring unit to track offenders in “real-time” and immediately investigate and respond

to location and equipment violations. According to DPP, this new monitoring unit would require three shifts of employees to meet the 24-hour requirements, from 15 satellite offices around the State.

Legislative Services notes that DPP's estimate is based on an assumption that the bill would involve considerable numbers of field investigations, pursuits, apprehensions of persons in violation of geographic restrictions and, thereby, increasing the personnel need to a total of 428 positions, including 240 correctional officers sergeants, 72 correctional officer lieutenants, and 72 police communication operators. This would increase program costs in fiscal 2012 to \$46.1 million, and to \$77.7 million by fiscal 2016. However, though considerable, DPP's responsibilities under this bill do not primarily concern the pursuit and apprehension of violators. The bill accords those responsibilities to local law enforcement units via "contracts" with the agency.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, and Harford counties; Commission on Criminal Sentencing Policy; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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