

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 208

(Senator Stone, *et al.*)

Judicial Proceedings

---

Criminal Procedure - Sexual Offenders - Tracking Device as Condition of  
Probation and for Life After Release from Custody

---

This bill provides for the electronic tracking of certain sexual offenders.

---

Fiscal Summary

**State Effect:** Significant increase in general fund expenditures for global positioning systems (GPS) monitoring costs for the Department of Public Safety and Correctional Services (DPSCS). Actual costs will depend on the number of people subject to temporary or lifetime tracking. Under one set of assumptions, general fund expenditures may increase by \$165,000 in FY 2012 and by \$825,000 in FY 2016. Future year costs may include the need for additional personnel for the Division of Parole and Probation (DPP). The bill's criminal penalty provisions are not expected to significantly affect State finances or operations. Minimal impact on general fund revenues.

**Local Effect:** Minimal. Local law enforcement agencies already provide enforcement resources to locate and apprehend persons who are in noncompliance with court orders or statutes.

**Small Business Effect:** None.

---

Analysis

**Bill Summary:** This bill requires that a person who has been convicted for a second time of a sexual offense in which the victim was a minor or who is required to register as a sex offender for a term of life must (1) register for electronic tracking with DPSCS; and (2) at all times and for a term of life after release from custody of a supervising authority,

wear an “electronic tracking device” provided by DPSCS. The bill specifies that, if a court places a sex offender whose victim was a minor on probation, the court must require that the defendant register with DPSCS for electronic tracking and may specify as a condition of probation geographic locations to which a defendant may not travel.

A person who has been ordered to register for electronic tracking as a condition of probation must (1) register for electronic tracking with DPSCS; and (2) at all times, and for the length of time ordered by the court, wear an electronic tracking device provided by the department.

DPSCS is required to:

- actively, and in real time, track electronically and identify a trackee’s geographic location for as long as the trackee is subject to these requirements; and
- report to the appropriate court or law enforcement agency a trackee’s presence in a geographic area in which the trackee has been prohibited to travel by court order or statute.

DPSCS must also (1) develop procedures to determine, investigate, and report a trackee’s noncompliance with terms and conditions of a court order or statute; (2) immediately investigate a report of noncompliance by a trackee; and (3) contract with local law enforcement agencies to assist in the location and apprehension of trackees who are in noncompliance with court orders or statutes as reported by the electronic tracking devices.

DPSCS is required to establish a reasonable fee for the cost of electronic tracking and collect the fee from each trackee ordered to wear an electronic tracking device. If DPSCS determines that a trackee cannot afford to pay the fee, DPSCS may exempt the trackee wholly or partly from the fee.

A trackee may not knowingly fail to register with DPSCS; fail to wear an electronic tracking device; or alter, tamper with, damage, or destroy an electronic tracking device. 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:** 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 SB 208/ Page 2

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.

**Background:** Neither the Division of Correction nor DPP track the ages of the victim or previous offenses. As of March 2, 2011, there were a total of 5,900 registered sex offenders in all tiers not still incarcerated. The growth rate in the registry for all tiers is estimated at 500 offenders per year.

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. 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.

**State Fiscal Effect:** *For purposes of illustration only*, if 50 persons annually are subject to electronic tracking under the bill, and assuming the monitoring is handled with existing

DPP personnel, general fund expenditures may increase by \$165,000 in fiscal 2012. Future year costs increase by that amount each year, assuming that intake numbers remain relatively constant, and in some cases extend for the lifetime of the offender. Under this assumption, within five years, additional State costs for electronic tracking could total \$825,000. However, because the actual number of persons who would require constant electronic tracking under the bill is unknown, actual costs (including the possible need for additional monitoring personnel) may be significantly higher. In any case, 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.

Any potential revenue from persons subject to electronic tracking is expected to be minimal. Historically, DPP experiences a collection rate of only 30% to 35% from supervision fees.

---

### **Additional Information**

**Prior Introductions:** SB 435 of 2010 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Harford, and Montgomery counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State’s Attorneys’ Association; Department of Legislative Services

**Fiscal Note History:** First Reader - March 14, 2011  
ncs/hlb

---

Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510