

(PRE-FILED)

By: **Senators Klausmeier, Stone, Astle, Kelley, Mooney, Munson, Schrader, and Hogan**

Requested: July 14, 2005

Introduced and read first time: January 11, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Sex Offenders - Electronic Tracking and Movement**  
3 **Restrictions**

4 FOR the purpose of requiring a court to require a certain defendant, as a condition of  
5 probation, to register for certain electronic tracking by the Department of Public  
6 Safety and Correctional Services; authorizing a court to specify geographic  
7 locations to which certain defendants may not travel as a condition of probation;  
8 requiring a certain person who is required to register as a sex offender for a term  
9 of life to register for electronic tracking with the Department and to wear at all  
10 times an electronic tracking device provided by the Department; requiring the  
11 Department to establish and maintain a program to actively, and in real time,  
12 electronically track and identify a certain individual's geographic location for a  
13 certain period of time; requiring the Department to timely report to the  
14 appropriate court or law enforcement agency a certain individual's presence in a  
15 certain area; requiring the Department to develop certain procedures to  
16 determine, investigate, and report a certain individual's noncompliance with the  
17 terms and conditions of a court order or statute; requiring the Department to  
18 immediately investigate reports of noncompliance with a court order or statute;  
19 requiring the Department to contract with a local law enforcement agency to  
20 assist in the location and apprehension of certain individuals; requiring the  
21 Department to establish a reasonable fee for the cost of electronically tracking  
22 and, subject to a certain exception, to collect the fee from certain individuals;  
23 prohibiting a certain offender from failing to register under this Act, failing to  
24 wear a certain electronic tracking device, or altering, tampering with,  
25 damaging, or destroying a certain electronic tracking device; providing penalties  
26 for a violation of this Act; defining certain terms; and generally relating to  
27 electronic tracking of and movement restrictions on certain offenders.

28 BY adding to  
29 Article - Criminal Procedure  
30 Section 6-233; 11-1101 through 11-1104 to be under the new subtitle "Subtitle  
31 11. Electronic Tracking of Certain Offenders"  
32 Annotated Code of Maryland

1 (2001 Volume and 2005 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Criminal Procedure

4 Section 11-701 and 11-707

5 Annotated Code of Maryland

6 (2001 Volume and 2005 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9

**Article - Criminal Procedure**

10 6-233.

11 IF THE COURT PLACES ON PROBATION A DEFENDANT WHO HAS BEEN  
12 CONVICTED OF A VIOLATION THAT REQUIRES THE DEFENDANT TO REGISTER AS A  
13 SEX OFFENDER FOR A TERM OF LIFE UNDER § 11-707 OF THIS ARTICLE, THE COURT:

14 (1) SHALL REQUIRE AS A CONDITION THAT THE DEFENDANT REGISTER  
15 FOR ELECTRONIC TRACKING BY THE DEPARTMENT UNDER TITLE 11, SUBTITLE 11 OF  
16 THIS ARTICLE; AND

17 (2) MAY SPECIFY AS A CONDITION GEOGRAPHIC LOCATIONS TO WHICH  
18 A DEFENDANT MAY NOT TRAVEL.

19 11-701.

20 (a) In this subtitle the following words have the meanings indicated.

21 (b) "Child sexual offender" means a person who:

22 (1) has been convicted of violating § 3-602 of the Criminal Law Article;

23 (2) has been convicted of violating any of the provisions of the rape or  
24 sexual offense statutes under §§ 3-303 through 3-307 of the Criminal Law Article for  
25 a crime involving a child under the age of 15 years;

26 (3) has been convicted of violating the fourth degree sexual offense  
27 statute under § 3-308 of the Criminal Law Article for a crime involving a child under  
28 the age of 15 years and has been ordered by the court to register under this subtitle;  
29 or

30 (4) has been convicted in another state or in a federal, military, or Native  
31 American tribal court of a crime that, if committed in this State, would constitute one  
32 of the crimes listed in items (1) and (2) of this subsection.

33 (b-1) "Employment" means an occupation, job, or vocation that is full time or  
34 part time for a period exceeding 14 days or for an aggregate period exceeding 30 days

1 during a calendar year, whether financially compensated, volunteered, or for the  
2 purpose of government or educational benefit.

3 (c) "Local law enforcement unit" means the law enforcement unit in a county  
4 that has been designated by resolution of the county governing body as the primary  
5 law enforcement unit in the county.

6 (d) "Offender" means a person who is ordered by a court to register under this  
7 subtitle and who:

8 (1) has been convicted of violating § 3-503 of the Criminal Law Article;

9 (2) has been convicted of violating § 3-502 of the Criminal Law Article or  
10 the fourth degree sexual offense statute under § 3-308 of the Criminal Law Article, if  
11 the victim is under the age of 18 years;

12 (3) has been convicted of the common law crime of false imprisonment, if  
13 the victim is under the age of 18 years and the person is not the victim's parent;

14 (4) has been convicted of a crime that involves soliciting a person under  
15 the age of 18 years to engage in sexual conduct;

16 (5) has been convicted of violating the child pornography statute under §  
17 11-207 of the Criminal Law Article;

18 (6) has been convicted of violating any of the prostitution and related  
19 crimes statutes under Title 11, Subtitle 3 of the Criminal Law Article if the intended  
20 prostitute or victim is under the age of 18 years;

21 (7) has been convicted of a crime that involves conduct that by its nature  
22 is a sexual offense against a person under the age of 18 years;

23 (8) has been convicted of an attempt to commit a crime listed in items (1)  
24 through (7) of this subsection; or

25 (9) has been convicted in another state or in a federal, military, or Native  
26 American tribal court of a crime that, if committed in this State, would constitute one  
27 of the crimes listed in items (1) through (8) of this subsection.

28 (e) (1) Except as otherwise provided in this subsection, "release" means any  
29 type of release from the custody of a supervising authority.

30 (2) "Release" means:

31 (i) release on parole;

32 (ii) mandatory supervision release;

33 (iii) release from a correctional facility with no required period of  
34 supervision;

- 1 (iv) work release;
- 2 (v) placement on home detention; and
- 3 (vi) the first instance of entry into the community that is part of a
- 4 supervising authority's graduated release program.

5 (3) "Release" does not include:

- 6 (i) an escape; or
- 7 (ii) leave that is granted on an emergency basis.

8 (f) "Sexually violent offender" means a person who:

- 9 (1) has been convicted of a sexually violent offense; or
- 10 (2) has been convicted of an attempt to commit a sexually violent offense.

11 (g) "Sexually violent offense" means:

12 (1) a violation of §§ 3-303 through 3-307 or §§ 3-309 through 3-312 of

13 the Criminal Law Article;

14 (2) assault with intent to commit rape in the first or second degree or a

15 sexual offense in the first or second degree as prohibited on or before September 30,

16 1996, under former Article 27, § 12 of the Code; or

17 (3) a crime committed in another state or in a federal, military, or Native

18 American tribal jurisdiction that, if committed in this State, would constitute one of

19 the crimes listed in item (1) or (2) of this subsection.

20 (h) "Sexually violent predator" means:

21 (1) a person who:

22 (i) is convicted of a sexually violent offense; and

23 (ii) has been determined in accordance with this subtitle to be at

24 risk of committing another sexually violent offense; or

25 (2) a person who is or was required to register every 90 days for life

26 under the laws of another state or a federal, military, or Native American tribal

27 jurisdiction.

28 (i) "Supervising authority" means:

29 (1) the Secretary, if the registrant is in the custody of a correctional

30 facility operated by the Department;

- 1           (2)     the administrator of a local correctional facility, if the registrant,  
2 including a participant in a home detention program, is in the custody of the local  
3 correctional facility;
- 4           (3)     the court that granted the probation or suspended sentence, except as  
5 provided in item (12) of this subsection, if the registrant is granted probation before  
6 judgment, probation after judgment, or a suspended sentence;
- 7           (4)     the Director of the Patuxent Institution, if the registrant is in the  
8 custody of the Patuxent Institution;
- 9           (5)     the Secretary of Health and Mental Hygiene, if the registrant is in  
10 the custody of a facility operated by the Department of Health and Mental Hygiene;
- 11          (6)     the court in which the registrant was convicted, if the registrant's  
12 sentence does not include a term of imprisonment or if the sentence is modified to  
13 time served;
- 14          (7)     the Secretary, if the registrant is in the State under terms and  
15 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title  
16 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections  
17 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;
- 18          (8)     the Secretary, if the registrant moves to this State and was convicted  
19 in another state of a crime that would require the registrant to register if the crime  
20 was committed in this State;
- 21          (9)     the Secretary, if the registrant moves to this State from another state  
22 where the registrant was required to register;
- 23          (10)    the Secretary, if the registrant is convicted in a federal, military, or  
24 Native American tribal court and is not under supervision by another supervising  
25 authority;
- 26          (11)    the Secretary, if the registrant is not a resident of this State and has  
27 been convicted in another state or by a federal, military, or Native American tribal  
28 court; or
- 29          (12)    the Director of Parole and Probation, if the registrant is under the  
30 supervision of the Division of Parole and Probation.
- 31       (j)     "Transient" means a nonresident registrant who enters a county of this  
32 State with the intent to be in the State or is in the State for a period exceeding 14  
33 days or for an aggregate period exceeding 30 days during a calendar year for a  
34 purpose other than employment or to attend an educational institution.

1 11-707.

2 (a) (1) (i) A child sexual offender shall register annually in person, on or  
3 before January 1, with a local law enforcement unit for the term provided under  
4 paragraph (4) of this subsection.

5 (ii) Each registration shall include a new photograph.

6 (2) An offender and a sexually violent offender shall register annually, on  
7 or before January 1, with the Department in accordance with § 11-711(a) of this  
8 subtitle and for the term provided under paragraph (4) of this subsection.

9 (3) (i) A sexually violent predator shall register in person every 90  
10 days, on or before January 1, April 1, July 1, and October 1, in accordance with §  
11 11-711(b) of this subtitle and for the term provided under paragraph (4)(ii) of this  
12 subsection.

13 (ii) Registration shall include a photograph that shall be updated at  
14 least once each year.

15 (4) The term of registration is:

16 (i) 10 years; or

17 (ii) life, if:

18 1. the registrant is a sexually violent predator;

19 2. the registrant has been convicted of a sexually violent  
20 offense;

21 3. the registrant has been convicted of a violation of § 3-602  
22 of the Criminal Law Article for commission of a sexual act involving penetration of a  
23 child under the age of 12 years; or

24 4. the registrant has been convicted of a prior crime as a  
25 child sexual offender, an offender, or a sexually violent offender.

26 (5) A registrant who is not a resident of the State shall register for the  
27 appropriate time specified in this subsection or until the registrant's employment,  
28 student enrollment, or transient status in the State ends.

29 (b) A term of registration described in this section shall be computed from:

30 (1) the last date of release;

31 (2) the date granted probation; or

32 (3) the date granted a suspended sentence.

1 SUBTITLE 11. ELECTRONIC TRACKING OF CERTAIN OFFENDERS.

2 11-1101.

3 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5 (B) "ELECTRONIC TRACKING" MEANS MONITORING 24 HOURS A DAY AND 7  
6 DAYS A WEEK THE GEOGRAPHIC LOCATION OF AN INDIVIDUAL THROUGH THE USE  
7 OF AN ELECTRONIC TRACKING DEVICE.

8 (C) "ELECTRONIC TRACKING DEVICE" MEANS TECHNOLOGY THAT CAN  
9 DETERMINE THE LOCATION OF A TRACKEE AT ANY TIME AND IS APPROVED BY THE  
10 DEPARTMENT.

11 (D) "TRACKEE" MEANS A PERSON WHO IS REQUIRED TO REGISTER FOR  
12 ELECTRONIC TRACKING UNDER THIS SUBTITLE.

13 11-1102.

14 A PERSON REQUIRED TO REGISTER AS A SEX OFFENDER FOR A TERM OF LIFE  
15 UNDER § 11-707 OF THIS ARTICLE SHALL:

16 (1) REGISTER FOR ELECTRONIC TRACKING WITH THE DEPARTMENT;  
17 AND

18 (2) AT ALL TIMES WEAR AN ELECTRONIC TRACKING DEVICE PROVIDED  
19 BY THE DEPARTMENT.

20 11-1103.

21 (A) THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A PROGRAM TO:

22 (1) ACTIVELY, AND IN REAL TIME, ELECTRONICALLY TRACK AND  
23 IDENTIFY A TRACKEE'S GEOGRAPHIC LOCATION FOR AS LONG AS THE TRACKEE IS  
24 SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE; AND

25 (2) REPORT TO THE APPROPRIATE COURT OR LAW ENFORCEMENT  
26 AGENCY A TRACKEE'S PRESENCE IN A GEOGRAPHIC AREA IN WHICH THE TRACKEE  
27 HAS BEEN PROHIBITED TO TRAVEL BY COURT ORDER OR STATUTE.

28 (B) THE DEPARTMENT SHALL:

29 (1) DEVELOP PROCEDURES TO DETERMINE, INVESTIGATE, AND REPORT  
30 A TRACKEE'S NONCOMPLIANCE WITH TERMS AND CONDITIONS OF A COURT ORDER  
31 OR STATUTE;

32 (2) IMMEDIATELY INVESTIGATE A REPORT OF NONCOMPLIANCE BY A  
33 TRACKEE; AND

1           (3)     CONTRACT WITH LOCAL LAW ENFORCEMENT AGENCIES TO ASSIST  
2 IN THE LOCATION AND APPREHENSION OF TRACKEES WHO ARE IN NONCOMPLIANCE  
3 WITH COURT ORDERS OR STATUTES AS REPORTED BY THE ELECTRONIC TRACKING  
4 DEVICES.

5       (C)     (1)     THE DEPARTMENT SHALL ESTABLISH A REASONABLE FEE FOR THE  
6 COST OF ELECTRONIC TRACKING AND, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF  
7 THIS SUBSECTION, COLLECT THE FEE FROM EACH TRACKEE IN THE PROGRAM.

8           (2)     IF THE DEPARTMENT DETERMINES THAT A TRACKEE CANNOT  
9 AFFORD TO PAY THE FEE ESTABLISHED UNDER PARAGRAPH (1) OF THIS  
10 SUBSECTION, THE DEPARTMENT MAY EXEMPT THE TRACKEE WHOLLY OR PARTLY  
11 FROM THE FEE.

12 11-1104.

13       (A)     A TRACKEE MAY NOT KNOWINGLY:

14           (1)     FAIL TO REGISTER WITH THE DEPARTMENT;

15           (2)     FAIL TO WEAR AN ELECTRONIC TRACKING DEVICE PROVIDED BY  
16 THE DEPARTMENT; OR

17           (3)     ALTER, TAMPER WITH, DAMAGE, OR DESTROY AN ELECTRONIC  
18 TRACKING DEVICE PROVIDED BY THE DEPARTMENT.

19       (B)     A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON  
20 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE  
21 NOT EXCEEDING \$10,000 OR BOTH.

22       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2006.