

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 700

(Senator Forehand)

Judicial Proceedings

Domestic Violence - Violation of Protective Order - Active Electronic Monitoring

This bill authorizes a court to suspend imposition or execution of a sentence and place the defendant on probation subject to electronic monitoring when entering a judgment that a defendant failed to comply with the relief granted in a protective order. The bill applies only in a county that implements a global positioning satellite tracking system program. The court may place the defendant on probation on the condition that the defendant is supervised by an active electronic monitoring system and the defendant is responsible for paying the fee for the monitoring. However, if the county determines that the defendant cannot afford the fee, the county may partially or wholly exempt the defendant from the fee.

Fiscal Summary

State Effect: None. The bill's provisions could be handled with existing resources.

Local Effect: Local revenues could increase to the extent that additional defendants are subject to electronic monitoring.

Small Business Effect: None.

Analysis

Current Law: On entering a judgment of conviction, the court may suspend the imposition or execution of the sentence and place the defendant on probation on conditions that the court considers proper.

The criminal penalties for noncompliance with the relief granted in a protective order apply to a respondent who does not:

- refrain from abusing or threatening to abuse any person eligible for relief;
- refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- refrain from entering the residence of any person eligible for relief;
- vacate the home immediately where the person eligible for relief and the respondent are residing together at the time of the abuse;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or the home of other family members; or
- for a final protective order only, surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order.

A person who commits any of the offenses listed above is guilty of a misdemeanor. For a first offense, the person is subject to a maximum fine of \$1,000 and/or imprisonment for up to 90 days. For a second or subsequent offense, the person is subject to a maximum fine of \$2,500 and/or imprisonment for up to one year.

Background: “Active electronic monitoring” is electronic monitoring that takes place on a 24-hour basis. The monitoring law enforcement agency receives reports in real time, that is, at the time an infraction occurs. Traditional electronic monitoring, also referred to as “passive” electronic monitoring, would provide a report on a predetermined schedule and inform the agency of the infractions that took place over a predetermined period. For example, a report might indicate that the defendant had five electronic monitoring infractions over a one-week period.

A monitoring system that is connected to a GPS tracking system would enable the law enforcement agency to know not only when the defendant went out of range, but precisely to what location the defendant went. If a person under a protective order is told to stay away from the residence and the spouse's workplace, active electronic monitoring by GPS would enable the law enforcement agency to know exactly when the defendant left the area of confinement and if the defendant went to a place that was prohibited. Traditional electronic monitoring is accomplished through the defendant's phone system, not through satellite.

A protective order may be filed in either the District Court or circuit court. The maximum duration of a final protective order is one year. According to the Administrative Office of the Courts (AOC), most final protective orders are issued for a period of one year.

For fiscal 2006 (the most recent data available from AOC) the following table shows judicial activity with regard to interim, temporary, and final protective orders.

<u>Jurisdiction</u>	<u>Protective Order Hearings</u>	<u>Protective Orders Granted</u>
District Court	52,042	31,950
Circuit Court	<u>7,299</u>	<u>3,463</u>
Total Actions	59,341	35,413

According to the Institute for Law and Justice and the National Institute of Justice, at least 43 states and the District of Columbia make violation of a protective order against domestic violence a separate criminal offense. In three other states, violation of an order may be subject to a special criminal trespass law. Even in those states where there is no criminal penalty, however, violation of a protective order may be punished by a court finding of criminal contempt, which generally calls for misdemeanor-level penalties. In four states, violation of a protection order is treated as a felony. In other states, a violation is a misdemeanor. In at least eight states, repeat violations of a court order may constitute a felony.

State and Local Fiscal Effect: AOC advises that this bill would not have a fiscal impact because it simply gives the courts an additional disposition option when imposing sentence on a defendant.

While electronic monitoring is available in all counties, only some counties have implemented GPS tracking systems. The fee for electronic monitoring is determined by county correctional systems. It varies depending on the required level of monitoring and the length of time a defendant is subject to monitoring. The vast majority of defendants who undergo electronic monitoring instead of confinement are able to pay the fee. Since the county would set up the GPS tracking system, county law enforcement would be responsible for the active electronic monitoring required by the bill. County law enforcement would inform the Division of Parole and Probation when the defendant was not in compliance, and the division would inform the court, which may then reimpose the original sentence.

Additional Information

Prior Introductions: None.

Cross File: HB 1116 (Delegate Shank, *et al.*) – Judiciary.

Information Source(s): Institute for Law and Justice, National Institute for Justice,
Department of Legislative Services

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mll/jr

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