

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 435

(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: Additional general fund 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 \$160,000 in FY 2011. Future year costs may include the need for additional personnel for 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 units 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: Electronic tracking – generally done by GPS monitoring – may be ordered by a court. Chapter 4 of the 2006 special session, which provided for extended supervision of certain sexual offenders also required the Parole Commission to enter into agreements with defendants that set out specific conditions of supervision, which may include such monitoring and geographic restrictions on residence or presence. To date, no extended supervision agreements have been made.

Background: Neither the Division of Correction nor DPP track the ages of the victim or previous offenses. Assuming that there is no need for additional monitoring personnel,

passive GPS monitoring costs about \$5.50 per offender per day (\$2,000 per year) and active/constant monitoring costs about \$8.80 per offender per day (\$3,200 per year). It is assumed that the bill's electronic monitoring requirements will be assigned to DPP.

State Expenditures: *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 \$160,000 in fiscal 2011. 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. 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.

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.

The Office of the Public Defender (OPD) has advised that this bill will result in fewer plea bargains and 278 additional jury trials due to the electronic tracking requirements and a possible 594 additional felonies for violations of the bill's requirements. Accordingly, OPD believes the bill will necessitate the hiring of 10 additional attorneys at a cost of about \$651,000 in fiscal 2011 and growing to \$1 million by fiscal 2015. Legislative Services believes that such an estimate is unfounded and predicated on numbers of new trials and felony charges that will likely not be realized.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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