

Department of Legislative Services
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 4
Judiciary

(Delegate A. Miller)

Criminal Procedure - Domestic Violence - Active Electronic Monitoring
(Amber's Law)

This bill authorizes a court to order a defendant to be supervised by active electronic monitoring and responsible for paying the monitoring fee (1) as a condition of a defendant's pretrial release on a charge of violating a protective order or (2) if a court suspends the imposition or execution of sentence and places the defendant on probation when entering a judgment that a defendant failed to comply with the relief granted in a protective order. If the court determines that a defendant cannot afford to pay the monitoring fee, the court may exempt the defendant wholly or partly from the fee.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$35,200 in FY 2017 only for programming changes. The bill does not otherwise materially impact the workload of the Judiciary or the Department of Public Safety and Correctional Services (DPSCS), as discussed below.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	35,200	0	0	0	0
Net Effect	(\$35,200)	\$0	\$0	\$0	\$0

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

Local Effect: Potential minimal increase in county expenditures to the extent that defendants are subject to electronic monitoring who are unable to pay the required fee. Minimal increase in revenue to the extent that additional defendants are subject to electronic monitoring and pay fees for the monitoring.

Small Business Effect: None.

Analysis

Current Law: A judge may allow the pretrial release of a defendant charged with violating specified provisions of a temporary or final protective order on suitable bail and/or any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community.

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
- surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order, as specified.

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

The Judiciary advises that in calendar 2014, there were 5,348 violations in the District Court for failure to comply with protective orders. DPSCS indicates that in fiscal 2015, it conducted intake for 434 individuals sentenced to probation for violating a protective order.

State/Local Fiscal Effect: To the extent that the increased level of supervision from electronic monitoring leads to an increase in the number of probation violation hearings, bail revocation hearings, and/or criminal charges for violation of a protective order, the courts can handle these hearings using existing resources.

For purposes of this analysis, it is assumed that local law enforcement, and not the Division of Parole and Probation (DPP), will be responsible for the electronic monitoring of the defendants. Accordingly, local law enforcement agencies will be responsible for setting up the monitoring system and responding to any incidents. Even if the protective order has expired, it is likely that a condition of probation will be to stay away from the petitioner so the defendant will continue to be subject to electronic monitoring. If this condition is violated, local law enforcement will inform DPP and DPP will inform the court, which may then reimpose the original sentence. DPP can handle this notification process with existing resources.

It is also likely that a condition of pretrial release will be for the defendant to stay away from the petitioner who filed the protective order. If the defendant violates this condition, law enforcement will notify the court, which may then revoke the defendant's bail. Although local expenditures (and State expenditures for the Baltimore Pretrial Complex, a State-operated facility) may also increase to the extent that local detention facilities experience an increase in population if pretrial release for a defendant is revoked, it is assumed that incarceration costs are not significantly affected. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

The bill also specifies that the defendant may be responsible for paying the fee for monitoring. County revenues increase minimally, depending on the amount of the fee that is charged and the ability of the defendants to pay the fee. On the other hand, county expenditures may increase if defendants are not able to pay the fee. In addition, efforts to collect monitoring fees from defendants may result in increased administrative costs for local governments. For informational purposes only, DPSCS advises that pursuant to its contract for active electronic monitoring, the average rate per offender for active electronic monitoring is approximately \$3.80 per day.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 26, 2016
min/kdm

Analysis by: Jennifer K. Botts

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