

Department of Legislative Services
2018 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 65
Judiciary

(Delegate Angel)

**Criminal Procedure - Domestic Violence - Active Electronic Monitoring -
Pretrial Release and Probation**

This bill authorizes a court to order a defendant to be supervised by electronic monitoring (1) as a condition of a defendant’s pretrial release, if the victim has requested reasonable protections for safety; (2) as a condition of pretrial release on a charge of violating a protective order; or (3) as a condition of probation before judgement. The bill also expands prohibitions against violating specified conditions of pretrial or posttrial release to include any crimes against a victim.

Fiscal Summary

State Effect: General fund expenditures increase by \$100,400 in FY 2019 only for programming changes and further increase minimally beginning in FY 2019 due to incarceration expenditures. General fund revenues are not materially affected from electronic monitoring fees.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,400	-	-	-	-
Net Effect	(\$100,400)	(-)	(-)	(-)	(-)

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

Local Effect: Potential minimal increase in expenditures to the extent that additional defendants are subject to electronic monitoring. Potential minimal increase in revenues from electronic monitoring fees. Minimal increase in local incarceration expenditures.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires the court and a District Court commissioner to consider including, as a condition of pretrial release for a defendant, an order that the defendant be placed on electronic monitoring if a victim has requested reasonable protections for safety. In addition, the court, a juvenile intake officer, and a District Court commissioner must consider including an order, as a condition of pretrial release or prehearing release of a specified child respondent, that the defendant be placed on electronic monitoring with victim stay-away alert technology.

The bill authorizes the court to order a defendant on pretrial release for violating a protective order to be responsible for paying the fee for electronic monitoring. If the court determines that such a defendant cannot afford to pay the monitoring fee, the court may exempt the defendant wholly or partly from the fee.

The bill prohibits a person charged with committing any crime against a victim from violating a condition of pretrial or posttrial release that prohibits the person from contacting, harassing, or abusing the alleged victim or going in or near the alleged victim's residence or place of employment. A violator is guilty of a misdemeanor and subject to up to 90 days imprisonment.

Electronic monitoring includes electronic monitoring with "victim stay-away alert" technology, which is a system of electronic monitoring that is capable of notifying a victim if the defendant is at or near a location from which the defendant has been ordered by the court to stay away.

Current Law: The court or a District Court commissioner must consider including, as a condition of pretrial release for a defendant, reasonable protections for the safety of the alleged victim. If such protections have been requested, the court or a commissioner must consider including provisions regarding no contact with the alleged victim or the alleged victim's premises or place of employment.

A judicial officer, on a finding of probable cause and before the issuance of an arrest warrant or a summons, must provide to an individual filing an application for a statement of charges under Maryland Rule 4-211 an opportunity to request reasonable protections for the safety of an alleged victim or the victim's family. A victim impact statement must include any request for electronic monitoring or electronic monitoring with victim stay-away alert technology. The State Board of Victim Services must include in its pamphlets information regarding how to request that an offender be placed on electronic monitoring or electronic monitoring with victim stay-away alert technology.

A judge may allow a defendant, charged with violating specified provisions of a temporary or final protective order, pretrial release 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.

A person charged with committing sexual offenses against a victim who is a minor may not violate a condition of pretrial or posttrial release that prohibits the person from contacting, harassing, or abusing the alleged victim or going in or near the alleged victim's residence or place of employment. A violator is guilty of a misdemeanor and subject to a maximum penalty of 90 days imprisonment.

When a defendant pleads guilty or *nolo contendere* or is found guilty of a crime, the court may stay the entering of judgment, defer further proceedings, and place the defendant on probation if specified conditions are met.

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 maximum penalties of a \$2,500 fine and/or imprisonment for one year.

“Victim stay-away alert technology” is a system of electronic monitoring that is capable of notifying a victim if the defendant is at or near a location from which the defendant has been ordered by the court to stay away.

Background: The Judiciary advises that in fiscal 2017, there were 6,467 violations in the District Court and 678 in the circuit courts for failure to comply with protective orders.

State/Local Fiscal Effect:

Electronic Monitoring Costs

Although the bill mandates consideration by the court to order a specified defendant to be supervised by electronic monitoring, the bill does not mandate that the court impose the condition in any particular case. In addition, the court may already order a defendant to be supervised by electronic monitoring, even in the absence of the bill.

For purposes of this analysis, except in Baltimore City, it is assumed that local law enforcement, and not the Department of Public Safety and Correctional Services (DPSCS), is responsible for the electronic monitoring of defendants at the pretrial stage. Accordingly, local law enforcement agencies are responsible for setting up the monitoring system and responding to any incidents in most jurisdictions. In Baltimore City, DPSCS is responsible for setting up the monitoring system and responding to incidents. The bill also specifies that the defendant may be responsible for paying the fee for monitoring when ordered as a condition of pretrial release for the violation of a protective order. For purposes of this analysis, it is assumed that any defendant for whom electronic monitoring is ordered, pursuant to the bill's provisions, is responsible for any fee, and that only in cases in which it is ordered as a condition of pretrial release for the violation of a protective order are judges authorized to exempt a defendant wholly or partly from the fee.

State general fund and local government expenditures related to electronic monitoring may increase minimally as a result of the bill. In addition, efforts to collect monitoring fees from defendants may result in increased administrative costs. State general fund and local revenues may increase minimally, depending on the amount of the electronic monitoring fee that is charged and the ability of the defendants to pay the fee.

DPSCS advises that the active electronic monitoring of offenders likely requires the creation of a specially trained unit requiring additional general fund expenditures of \$2.9 million in fiscal 2019, increasing to \$3.4 million by fiscal 2023. The Department of Legislative Services disagrees. As noted above, at the pretrial stage, a defendant is responsible for paying the electronic monitoring fee unless waived by the court. At the posttrial stage, the bill only requires consideration of electronic monitoring and limits that consideration to cases in which the defendant is sentenced to probation before judgement; thus, this analysis assumes that the number of defendants for which a court imposes electronic monitoring posttrial is minimal.

Although specific information regarding the costs of electronic monitoring that includes victim stay-away alert technology is not available, DPSCS advises that the cost associated with electronic monitoring is \$3.50 to \$3.80 per day (depending on the type of monitoring). Assuming the cost for monitoring with victim stay-away alert technology is relatively

similar, and *for illustrative purposes only*, DPSCS expenditures increase by up to \$1,387 for every offender who is ordered to be monitored per year.

Increased Court Cases and Required Programming Changes

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. Any additional cases resulting from the expansion of the misdemeanor prohibiting contact with victims, as discussed below, likewise does not materially impact the workload of the courts.

General fund expenditures for the Judiciary increase by \$100,400 in fiscal 2019 only for programming changes in order to accommodate the bill's changes.

Incarceration Costs

If a defendant violates a stay-away condition regarding pretrial release, law enforcement notifies the court, which may then revoke the defendant's bail. If such a condition is imposed as part of a defendant's probation, local law enforcement informs the Division of Parole and Probation (DPP), and DPP informs the court, which may then reimpose the original sentence. Local expenditures (and State expenditures for the Baltimore Pretrial Complex, a State-operated facility used primarily for pretrial detentions) may increase at the pretrial stage to the extent that local detention facilities experience an increase in population if pretrial release for a defendant is revoked; local and State expenditures may increase at the posttrial stage to the extent that original sentences are imposed.

In addition, the bill significantly expands the number of individuals who are subject to misdemeanor charges for violating a condition of release that prohibits contact with the victim in the underlying case. Accordingly, State general fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. Local expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; City of Westminster; Town of Leonardtown; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Maryland State's Attorneys' Association; Department of Legislative Services

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