

Department of Legislative Services
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1163
Judiciary

(Delegate A. Miller, *et al.*)

Judicial Proceedings

Criminal Procedure - Conditional Release - Electronic Monitoring (Amber's Law)

This bill requires a judicial officer, on a finding of probable cause and before the issuance of an arrest warrant or a summons, to 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. The bill also requires a victim impact statement to 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. “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.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$29,300 in FY 2018 only for programming changes. The bill does not otherwise materially impact the workload of the Judiciary. Minimal increase in general fund expenditures and revenues for the Department of Safety and Correctional Services (DPSCS) to the extent that electronic monitoring is ordered for offenders under its supervision and offenders pay fees for the monitoring.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$29,300	-	-	-	-
Net Effect	(\$29,300)	(-)	(-)	(-)	(-)

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

Local Effect: Minimal increase in county expenditures and revenues to the extent that additional defendants are subject to electronic monitoring and pay fees for the monitoring.

Small Business Effect: None.

Analysis

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.

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.

Pursuant to Maryland Rule 4-211, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense on written application containing an affidavit showing probable cause that the defendant committed the offense charged.

State/Local Fiscal Effect: The fiscal impact of the bill depends on the number of *additional* cases for which electronic monitoring is ordered (*i.e.*, cases in which electronic monitoring would not have otherwise been ordered absent the specific ability of the victim to request protections as allowed by the bill) and in how many cases electronic monitoring with victim stay-away alert technology is ordered. Because it is not possible to reliably predict the number of additional cases that include orders for electronic monitoring (including orders for monitoring with victim stay-away alert technology), the discussion below provides information regarding the potential implications of increased monitoring.

Electronic Monitoring Costs

For purposes of this analysis, it is assumed that local law enforcement, and not the Division of Parole and Probation, is responsible for the electronic monitoring of any defendants who are subject to electronic monitoring as a condition of pretrial release. Accordingly, local law enforcement agencies are responsible for setting up the monitoring system and responding to any incidents. For purposes of this analysis, it is assumed that any defendant for whom electronic monitoring is ordered is responsible for any fee assessed for the monitoring. Assuming that at least some additional defendants are subject to electronic monitoring, county expenditures increase minimally; county revenues also increase

minimally, depending on the amount of the fee that is charged, to cover the costs of the monitoring. Efforts to collect monitoring fees from defendants may result in minimal increased administrative costs for local governments.

To the extent that defendants are placed on probation and are subject to electronic monitoring, general fund expenditures for DPSCS increase to provide the monitoring equipment; such expenditures are at least partially offset to the extent that the defendant is subject to a fee (and a fee is actually collected). Although specific information regarding the cost associated with electronic monitoring that includes victim stay-away alert technology is not available, DPSCS has previously advised that the cost associated with electronic monitoring is \$3.50 to \$3.80 per day (depending on the type of monitoring). Assuming that 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 (which generally include provisions requiring a respondent to stay away from the petitioner), the courts can handle these hearings using existing resources.

General fund expenditures for the Judiciary increase by \$29,310 in fiscal 2018 only for programming changes in order to accommodate the bill's changes.

Incarceration Costs

If the bill's provisions result in additional defendants being subject to electronic monitoring pretrial and 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, a court, once receiving notice of the violation, 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 to the extent that detention facilities experience an increase in population if pretrial release for a defendant is revoked; local and State expenditures may increase to the extent that original sentences are imposed. However, it is not anticipated that the bill's provisions materially impact incarceration costs.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 \$60 to \$160 per inmate in recent years.

Informational Pamphlets

The State Board of Victim Services can use existing resources to modify its informational pamphlets.

Additional Information

Prior Introductions: None.

Cross File: SB 976 (Senator Lee, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: kb/kdm
First Reader - February 24, 2017
Third Reader - March 22, 2017
Revised - Amendment(s) - March 22, 2017
Enrolled - May 8, 2017
Revised - Amendment(s) - May 8, 2017
Revised - Clarification - May 8, 2017

Analysis by: Jennifer K. Botts

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