

Legislative Analysis



ASSAULTIVE CRIMES: ALLOW ELECTRONIC MONITORING WHILE ON BAIL

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House Bill 4127 as enrolled
Public Act 54 of 2013
Sponsor: Rep. Joel Johnson
House Committee: Criminal Justice
Senate Committee: Judiciary

Second Analysis (8-21-13)

BRIEF SUMMARY: The bill grants a judge or magistrate the discretion to require a defendant released on bail while awaiting trial for an assaultive crime to wear an electronic monitoring device.

FISCAL IMPACT: An increase in the number of defendants ordered by judges to wear electronic monitoring devices while out on bail pending trial could result in increased costs for local courts. Though defendants would be required to pay for costs associated with wearing the devices, if defendants could not pay and chose to perform community service instead, local courts would have to pay the costs of the devices.

THE APPARENT PROBLEM:

Public Act 192 of 2008, also known as "Mary's Law," allows a court to order a defendant who is charged with a crime involving domestic violence and who is released on bail to wear or carry a GPS device as a condition of release while awaiting trial. A court doesn't have to order the device, but if it does, the defendant cannot be released without agreeing to bear the cost of the GPS device and monitoring or to do community service in lieu of payment. With the informed consent of the victim, the court may also order the defendant to provide the victim with an electronic receptor device that alerts the victim if the defendant comes within a predetermined proximity to the victim. A defendant ordered to carry or wear a GPS device under this provision is prohibited, as a condition of release, from purchasing or possessing a firearm.

At the urging of the Clare County prosecuting attorney after a tragic incident in 2010, legislation has been introduced to expand Mary's Law to include any other assaultive crime and allow any type of electronic monitoring device, rather than just a GPS unit.

THE CONTENT OF THE BILL:

House Bill 4127 amends Mary's Law (within the Code of Criminal Procedure, MCL 765.6b) to extend its provisions beyond those released on bail while charged with domestic violence so as to apply to a defendant charged with a crime involving any other assaultive crime. "Assaultive crime" would mean that term as defined in Section 9A of Chapter X.

Mary's Law gives courts the discretion to order a defendant charged with domestic violence to carry or wear a global positioning system (GPS) device as a condition of release while awaiting trial. The bill allows judges to also order the devices as a condition of release pending trial for defendants charged with any assaultive crime. The bill also changes references to "global positioning system device" to "electronic monitoring device". An electronic device ordered to be worn under this provision of law must provide reliable notification of removal or tampering. A person who tampered with or removed an electronic monitoring device ordered under this provision would be subject to the penalty provided under Section 3f of Chapter XI (MCL 771.3f), which is imprisonment for not more than four years and/or a fine of not more than \$4,000.

Lastly, the bill clarifies that it does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules, including ordering a defendant to wear an electronic monitoring device. (Underlining denotes new language added by the bill.)

["Assaultive crime" is an offense against a person and includes, but is not limited to, the following: Felonious assault; assault with intent to maim, do great bodily harm, or commit murder; assault with intent to rob and steal, either armed or unarmed; certain crimes against a pregnant woman intending to cause a miscarriage or stillbirth, death to the embryo or fetus, or great bodily harm to the embryo or fetus; murder or attempted murder; manslaughter; kidnapping; taking or carrying or enticing away a child under 14 years of age; certain stalking offenses; criminal sexual conduct offenses; carjacking; and terrorism.]

ARGUMENTS:

For:

The morning in 2010 that 15-year-old Taylor Manley was to testify at a preliminary hearing against a 38-year-old man accused of sexually assaulting her was her last. Early in the morning, while her father was still at work, the man broke into her father's home, abducted her, drove her almost 200 miles away, and then killed her before committing suicide. This is the incident that spurred introduction of the legislation.

If electronic monitoring had been available for defendants charged with assaultive crimes as a condition for pretrial release when Taylor's accused assailant was arrested, police might have been able to locate Raymond Bush before Taylor was killed, or the young girl might have been able to call for help or protect herself if a receptor device had alerted her to his close proximity. A defendant ordered to wear an electronic device under the bill is also automatically prohibited from owning or buying a gun. Thus, the bill aims to increase safety for victims of assaultive crimes in the same manner as provided for victims of domestic violence. Some see the legislation as an important tool for judges and magistrates to use when setting bail conditions.

Response:

Apparently, there is nothing in state law now that would prohibit a judge or magistrate from ordering an electronic tether for a person charged with an assaultive crime when

released on bail prior to a preliminary hearing or the beginning of a trial. Some judges are already ordering electronic devices for crimes other than domestic violence as a condition for release on bail. Therefore, some see the bill as unnecessary.

Against:

A member of the bail bond industry recommended the bill be amended to require, in cases where an electronic device is ordered in an assaultive crime case, that the person also post a surety bond. Surety bonds are generally provided by a third party such as a bail bond business. The surety bond guarantees that the person will show up at all scheduled court appearances or the bail bond business must pay the bail in full. If a person misses a court appearance, the bail bond professional has an incentive to find the person and ensure his or her appearance in court. With local law enforcement agencies stretched thin due to budget cuts, police may not have the manpower to bring in every person who fails to show up in court, almost 30 percent by some reports. Reportedly, statistics gathered by the Bureau of Justice show that unsecured release (i.e., release on a person's own recognizance) has a failure-to-appear rate of 28 percent compared to a 4 percent failure-to-appear rate when a commercial surety bond is posted. A surety bond, therefore, adds another layer of accountability and may further incentivize a person to abide by all conditions of his or her release while awaiting trial.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.