

# HOUSE BILL REPORT

## HB 2407

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**As Reported by House Committee On:**  
Criminal Justice & Corrections  
Appropriations

**Title:** An act relating to electronic monitoring of sex offenders.

**Brief Description:** Revising provisions relating to electronic monitoring of sex offenders.

**Sponsors:** Representatives Lovick, Strow, O'Brien, Ericks, Dunshee, Linville, Grant, Lantz, Kessler, Williams, Blake, Morrell, Rodne, Hunt, Conway, P. Sullivan, Springer, Takko, Kilmer, Fromhold, B. Sullivan, Hunter, Simpson, Green, Miloscia, Sells, Upthegrove, Campbell and Ormsby.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/12/06, 1/31/06 [DPS];

Appropriations: 2/3/06, 2/4/06 [DPS(CJC)].

**Brief Summary of Substitute Bill**

- Requires the court to impose electronic monitoring, using the most appropriate technology given the individual circumstances of the offender for non-persistent sex offenders and those convicted of failure to register, unless the court finds the condition impracticable or inappropriate.
- Allows the court to impose a condition of electronic monitoring and allows the Department of Corrections to electronically monitor all other sex offenders.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

**Staff:** Lara Zarowsky (786-7119) and Jim Morishima (786-7191).

**Background:**

An offender convicted of more than one "two-strikes" sex offenses is considered a "persistent offender" and will be sentenced to life in prison without the possibility of parole.

An offender convicted of a first "two-strikes" sex offense will be sentenced to a "determinate plus" term; rather than a definitive number of days, a determinate plus sentence consists of a minimum and maximum term of confinement. The minimum term is generally set within the standard sentencing range, which takes into account the seriousness of the offense and the offender score. The maximum term is equal to the statutory maximum for the offense. After serving the minimum term, the offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB) through the end of the maximum term. For all "two-strikes" offenses, the maximum term is life imprisonment.

"Two-strikes" offenses include:

- Rape in the first and second degrees;
- Rape of a child in the first and second degrees;
- Child molestation in the first degree; and
- Indecent liberties by forcible compulsion.

The following crimes are "two-strikes" sex offenses when committed with sexual motivation:

- Murder in the first and second degrees;
- Homicide by abuse;
- Kidnapping in the first and second degrees;
- Assault in the first and second degrees;
- Assault of a child in the first degree; and
- Burglary in the first degree.

An offender will be released from custody after serving the minimum term unless the ISRB finds the offender more likely than not to commit a future predatory sex offense. When the offender is released, he or she will be in community custody until the expiration of the maximum term. The obligations of community custody must include certain conditions, such as reporting to a community corrections officer and obtaining residence approval from the Department of Corrections (DOC).

The term "electronic monitoring" refers to all electronic offender tracking systems. Such systems may provide passive or active offender tracking, and may employ radio frequency or global positioning system (GPS) technology. "Passive" monitoring systems record information about an offender's whereabouts for later download and examination, while "active" systems relay real-time reports as to the offender's location. All forms of electronic monitoring require an offender to wear an electronic device (such as an ankle bracelet) on his or her body.

Although electronic monitoring is not a mandatory condition of release for sex offenders, it may be ordered under some circumstances (e.g. as partial confinement for sentences of one year or less for non-violent offenders).

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### **Summary of Substitute Bill:**

The court must impose electronic monitoring for all sex offenders convicted of a first two-strikes sex offense or failure to register as a sex offender, unless the court finds that such a condition will be impracticable or inappropriate given the individual circumstances of the offender. For all other sex offenders, the court may impose a condition of electronic monitoring, and the DOC is given authority to electronically monitor offenders. If an offender is able to pay for all or part of the cost associated with electronic monitoring, the DOC may require the offender to do so. The DOC must notify local law enforcement whenever an offender is electronically monitored. Civil immunity is extended to the DOC, local law enforcement and the monitoring agency for acts or omissions related to information obtained through electronic monitoring.

**Substitute Bill Compared to Original Bill:**

Active GPS technology is no longer required to fulfill the electronic monitoring condition. The DOC will employ the most appropriate technology given the individual circumstances of the offender whenever electronic monitoring is imposed. Unless the court determines that such a requirement is impractical or inappropriate given the specific circumstances of the offender, the court must impose electronic monitoring for offenders convicted of failure to register as a sex offender and non-persistent sex offenders. The court may impose electronic monitoring as a condition and the DOC may electronically monitor all other offenders. The DOC must notify local law enforcement when electronic monitoring an offender. Civil immunity is extended to the DOC, local law enforcement and the monitoring agency.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support of original bill) Dealing with sex offenders in our communities is a serious and important issue that needs to be addressed. Monitoring technology is improving continually; being monitored with active GPS by using an ankle bracelet is not very intrusive for the offender. This bill is a component to a larger picture. Communities need to be aware of who resides there and what they are capable of. If we can't put sex offenders away for good, we need to know where they are at all times, and electronic monitoring sex offenders is a powerful step in this direction. Ideally, we would be housing and monitoring sex offenders; since we are not able to do this, we need to be creative and aggressive to ensure safety in our communities.

(Concerns on original bill) There are limitations to the technology even though it is continually improving. A GPS signal is not always available (bus tunnels, inside some buildings, and urban canyons present problems). Battery life, weather and heavy vegetation are also problems regarding the effectiveness of the technology. Though monitoring might have some deterrent effect, it cannot be relied on to prevent future sex crimes. The bottom

line is that offenders will reoffend if they are so inclined, regardless of an ankle bracelet. It is not clear what constitutes a violation requiring local law enforcement to be contacted. The GPS technology makes information available immediately, but local law enforcement is not set up to respond 24 hours a day. Active electronic monitoring should be added as a tool available for supervision, but community correction officers should be allowed to determine whether it is appropriate. Enacting this bill would require additional staffing on the community corrections side. Given the limitations of the technology, we don't want to create a false sense of security.

**Testimony Against:** None.

**Persons Testifying:** (In support of original bill) Representative Lovick, prime sponsor; Representative Strow; and Suzanne Brown McBride, Washington Coalition of Sexual Assault Programs.

(Concerns on original bill) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Lin Miller, Department of Corrections.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Criminal Justice & Corrections be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

**Staff:** Bernard Dean (786-7130).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Criminal Justice & Corrections:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This measure came from an interim task force on sex offender management. The bill allows the Department of Corrections and judges to impose electronic monitoring. It will allow us to keep better track of sex offenders in our communities.

Compared to the original bill, this bill does not impose mandates and allows for the most appropriate technology to be used for offenders.

**Testimony Against:** None.

**Persons Testifying:** Don Pierce and James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.