

HOUSE BILL REPORT

SSB 6134

As of Second Reading

Title: An act relating to exempting pretrial electronic alcohol monitoring programs from statutory limitations on pretrial supervision costs.

Brief Description: Exempting pretrial electronic alcohol monitoring programs from statutory limitations on pretrial supervision costs.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Padden).

Brief History:

Committee Activity:

None.

Brief Summary of Substitute Bill

- Exempts pretrial electronic alcohol monitoring, drug monitoring, and the 24/7 Sobriety Program from the \$150 limitation on pretrial supervision costs imposed on defendants.
- Allows courts to require defendants to reimburse agencies for the costs of electronic monitoring and abstinence monitoring in cases involving driving under the influence or being in physical control of a motor vehicle while under the influence.

Staff: Kelly Leonard (786-7147).

Background:

Pretrial Monitoring. Multiple types of monitoring programs and devices are available to the courts to impose upon a defendant prior to a conviction and sentencing. This includes, but is not limited to, electronic home monitoring devices with or without GPS technology, alcohol monitoring devices which monitor alcohol in a person's body, and the 24/7 Sobriety Program (Program).

The Program is a pilot program administered by the Washington Association of Sheriffs and Police Chiefs (WASPC). The Program is a 24-hour and seven-day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other

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bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body.

Payment of Costs. In criminal cases, the court may order a defendant to pay the costs incurred by the state in prosecuting the defendant, in administering a deferred prosecution program or pretrial supervision, or for preparing and serving a warrant for failure to appear. Court imposed costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

State statute limits the amount of costs the court can impose on defendants to the following:

- \$250 for administering a deferred prosecution;
- \$150 for administering pretrial supervision;
- \$100 for preparing and serving a warrant for failure to appear; and
- actual costs or \$100 per day, whichever is less, for incarceration of a defendant convicted of a misdemeanor or a gross misdemeanor.

The court may not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court must take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose. If it appears to the satisfaction of the court that payment will impose manifest hardship on the defendant, the court may remit all or part of the amount due, or modify the method of payment.

In *State v. Hardtke*, decided June 11, 2015, the Washington State Supreme Court held that alcohol monitoring administered by counties is a form of pretrial supervision, and therefore, a court may not require a defendant to pay more than \$150 of the costs associated with the monitoring. In the underlying case, the trial court ordered a defendant to pay \$3,972 for the costs of using a transdermal alcohol detection bracelet, which the court required him to wear. The nature by which the defendant obtained and used the bracelet was pertinent to the outcome of the case. The defendant did not fulfill the requirement to wear the bracelet through an independent third party without county involvement, which is common practice in obtaining a bond, for example. Instead, the county paid for the costs of the monitoring and sought reimbursement. In such cases, reimbursement is limited to the statutory maximum for pretrial supervision costs.

Summary of Bill:

The \$150 limitation on costs for pretrial supervision does not apply to pretrial electronic alcohol monitoring, drug monitoring, or the 24/7 Sobriety Program.

If the court orders electronic monitoring or alcohol abstinence monitoring in cases involving driving under the influence or being in physical control of a motor vehicle while under the influence, the court must specify who will provide the monitoring services and the terms under which the monitoring is performed. Upon conviction, the court may require that the

defendant reimburse the providing agency for the costs of the electronic monitoring or alcohol abstinence monitoring.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on June 19, 2015.

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

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.