

HOUSE BILL REPORT

2SSB 5149

As Passed House - Amended:
March 4, 2020

Title: An act relating to electronic monitoring with victim notification technology.

Brief Description: Concerning electronic monitoring with victim notification technology.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wilson, L., Becker, Kuderer, Short and Takko).

Brief History:

Committee Activity:

Public Safety: 2/20/20 [DP];

Appropriations: 2/29/20 [DP].

Floor Activity:

Passed House - Amended: 3/4/20, 96-0.

**Brief Summary of Second Substitute Bill
(As Amended by House)**

- Modifies the Sentencing Reform Act (SRA) definition of "electronic monitoring" to include electronic monitoring with victim notification technology.
- Applies the SRA definition of "electronic monitoring" to the statutes governing certain no-contact orders.
- Requires the Administrative Office of the Courts to take specified measures related to providing access to electronic monitoring with victim notification technology.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 10 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall and Pellicciotti.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Yvonne Walker (786-7841).

Background:

Electronic Monitoring.

The Sentencing Reform Act (SRA) contains the provisions governing felony sentences. As defined in the SRA, "electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location. This technology may include, but is not limited to: (1) radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and provides information accordingly to the monitoring agency; and (2) active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the individual's location.

A person may be ordered to submit to electronic monitoring as defined under the SRA in a variety of situations. Examples of circumstances in which electronic monitoring may be required include:

- when a person is ordered to community custody, home detention, or partial confinement;
- as a sanction for violation of a condition of sentence;
- in conjunction with an order for extraordinary medical placement;
- during pretrial release; and
- as a condition of, or upon violation of, certain protective orders.

The agency supervising an individual subject to electronic monitoring must establish the terms and conditions of the electronic monitoring for that individual and communicate those terms and conditions to the monitoring agency. A monitoring agency must report known violations of law or court-ordered conditions to the supervising agency, and must notify the court or supervising agency when certain incidents occur, including the monitored individual being unaccounted for or remaining outside of geographic boundaries.

Protective Orders and Electronic Monitoring.

There are various protective orders a court may issue prohibiting a defendant or respondent from contacting certain persons or visiting or remaining within certain locations, including civil protection orders and restraining orders, and no-contact orders entered in the context of

criminal proceedings. Specialized orders are available in cases involving certain conduct, including domestic violence, stalking, sexual assault, harassment, trafficking, promoting prostitution, and abuse of vulnerable adults.

A court issuing a stalking no-contact order, a sexual assault no-contact order, or a domestic violence protection order or no contact order may require that the defendant or respondent submit to electronic monitoring. In addition, the court may impose an electronic monitoring requirement upon violation of a wide range of protective orders.

Summary of Bill:

The SRA definition of "electronic monitoring" is expanded, and may include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party when the monitored individual enters within the restricted distance of the victim or protected party, or of a designated location. Notification may be direct or through a monitoring agency. Provisions are added to the statutes governing criminal no-contact orders entered in stalking, sexual assault, and domestic violence cases to indicate that electronic monitoring for purposes of those statutes is defined according to the SRA definition.

The Administrative Office of the Courts (AOC) must develop a list of vendors or enter into a contract with a vendor that provides electronic monitoring with victim notification technology, and must provide outreach to counties informing as to how courts may access these vendors. The AOC must also create an informational handout for distribution to persons seeking protection orders regarding the opportunity to request, where available, electronic monitoring with victim notification technology. The information must include a description of the technology, requirements for accessing the technology, and instruction as to how to request the technology, as well as a description of limitations on how the technology may or may not assist the person in maintaining safety.

Appointed or elected public officials, public employees, public agencies, and units of local government and their employees, are immune from civil liability for damages resulting from the use of electronic monitoring with victim notification technology, absent gross negligence or bad faith.

The official name of the act is the Tiffany Hill Act.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Public Safety):

(In support) This is an important bill. There was recently a horrible domestic violence homicide in Clark County that potentially could have been avoided had this bill been in place. The case involved a mother of three who was in a marriage in which there was

ongoing and daily abuse. When she eventually left, her husband continued engaging in abusive behavior. She eventually sought help in court and was granted a protection order, which he violated repeatedly, including attempting to purchase a gun and installing a tracker on her vehicle. He was arrested for the violations, and a risk assessment showed that he was at extreme risk of killing her, but he was able to meet bail requirements and was released. He eventually murdered her at her children's school before killing himself. The notification provided for in this bill would have given her the real-time information she needed to know she should leave the area and contact law enforcement, and for the school to go into a lockdown.

Domestic violence is a unique offense, and many of the patterns in this case are not uncommon. Rates of reported domestic violence in Washington are high, and even higher when unreported abuse is taken into consideration. There are people who live in fear every day, and this technology, which is used in other states, brings back some level of control to victims of domestic violence and stalking by providing them with critical and potentially life-saving information. Domestic violence is about power and control, and perpetrators are not willing to give up control when a partner leaves. This will help victims survive. There is a duty to provide victims with every reasonable chance to escape. If perpetrators cannot be kept in custody, victims should at least have access to notification technology. This technology works well. There is an exclusion zone set to the parameters indicated by the court, and the victim is notified through an app or a separate device if the restricted person enters that zone.

(Opposed) There is not a problem with the underlying policy of the bill, but there is a drafting issue that should be addressed. Currently, the bill refers to notification when a monitored person is "at or near" a restricted location. This should be changed to clarify that notification is made when the person actually enters a restricted zone. Otherwise, a restricted person could revictimize the protected party by repeatedly going up to the border of the restricted zone in order to send notifications to the protected party, without it actually being a violation. Care should be taken to avoid unintended consequences.

Staff Summary of Public Testimony (Appropriations):

(In support) There was a female Marine who was killed by her husband. She was shot in the presence of her three children who were in the car at the time she was murdered. The husband committed suicide sometime later. That young woman had protection orders against her husband, which he had violated over 69 times. The victim would have been saved if this technology would have been available to her at the time. Several mass shootings have been related to retaliation against victims. This is technology that needs to be made available to victims.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Senator Wilson, prime sponsor; Karina Knight; Rene Sundby; Wendi Rochester; Tanya Wollstein, Vancouver Police Department; Lauren Boyd, Clark County Prosecuting Attorney's Office; and James Schrimpsheer, Washington Chapter, Fraternal Order of Police.

(Opposed) Elissa Brine, Washington Association of Criminal Defense Lawyer and Washington Defenders Association.

Persons Testifying (Appropriations): Senator Wilson, prime sponsor.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.