



February 20, 2024

SUMMARY OF BILL AS AMENDED (013874): Enacts *The Debbie and Marie Domestic Violence Protection Act*.

Requires the court to order a person charged with aggravated assault to wear a global positioning monitoring system (GPS) as a condition of bail if the alleged victim is a domestic abuse victim and the alleged assault involved certain specified actions. Requires the GPS to be worn by the defendant, rather than carried or worn. Requires a defendant ordered to wear a GPS or to provide a victim with a GPS mobile application or receptor device as a condition of bail to pay all costs associated with operating the system for the defendant and the victim. Establishes that such defendants are no longer eligible to receive assistance from the Electronic Monitoring Indigency Fund (EMIF) to help pay for the GPS service, regardless of whether or not a defendant is indigent. Requires, if a defendant is released without a GPS, the court to make reasonable efforts to directly notify the defendant of such release and that the defendant will not be provided with access to notifications of the offender's proximity. Requires every county and municipality to enter into a written agreement with a qualified GPS provider.

Requires such a GPS system to be able to notify the victim through a cellular device application or electronic receptor device if the defendant is within a prescribed proximity of the victim's device. Requires the entity that provides the GPS service to notify a designated law enforcement employee and the appropriate emergency communications dispatch center when a defendant violates a condition of bond. Provides civil and criminal immunity to GPS providers and manufacturers if the victim voluntarily chooses not to utilize a device that provides proximity notifications or is noncompliant in the device's correct usage, and when the actions of those entities and the entities' employees are in accordance with the law and done in good faith and without gross negligence or malice.

FISCAL IMPACT OF BILL AS AMENDED:

**Decrease State Expenditures – \$19,500/FY24-25 and Subsequent Years/
Electronic Indigency Monitoring Fund**

Increase Local Expenditures – \$151,200/FY-25 and Subsequent Years*

Assumptions for the bill as amended:

- The GPS monitoring requirement as a condition of bail would apply to a defendant charged with aggravated assault on a domestic abuse victim when the court makes a finding that there is probable cause to believe the defendant:
 - caused serious bodily injury;
 - strangled or attempted to strangle the victim; or
 - used or displayed a deadly weapon.
- According to the Tennessee Bureau of Investigation's 2022 domestic violence report, a total of 4,273 incidents of domestic violence involved the use of a firearm or asphyxiation. This is assumed to be the number of defendants statewide that could be subject to an order for GPS monitoring as a condition of bail under the proposed legislation.
- It is estimated that approximately 20 percent of those offenders, or 855 individuals (4,273 cases x 20%), will be determined to be indigent.
- Pursuant to Tenn. Code Ann. § 40-11-152(h), if the magistrate determines that the defendant is indigent, the magistrate must order the defendant to pay any portion of the costs associated with the GPS system for which the defendant has the ability to pay, as determined by the magistrate. Any portion of the costs that the defendant is unable to pay shall come from the EMIF, subject to the availability of funds.
- The proposed legislation revises this section to require that all defendants ordered to wear a GPS must pay all costs associated with the GPS, including costs associated with any application or device provided to the victim. It also establishes that the defendant is no longer eligible to receive assistance for these costs from the EMIF, regardless of whether or not the defendant is indigent.
- Pursuant to Tenn. Code Ann. § 55-10-419, the EMIF was established as a cost share program between the state and local governments to fund the costs of monitoring requirements for indigent individuals. This includes ignition interlock devices and alternatives devices, which include GPS, transdermal monitoring, and other alcohol and drug monitoring devices.
- The fund is housed within the Department of Treasury (Treasury).
- Pursuant to Public Chapter 464, effective October 1, 2023, responsibility for the administration of the cost share program with local governments for alternative devices was transferred to the Office of Criminal Justice Programs (OCJP) within the Department of Finance and Administration (F&A). Responsibility for administration of the program for ignition interlock devices remains within Treasury.
- The process by which local governments can apply for cost share assistance from the state for alternative devices was restructured by Public Chapter 464. However, under both the old and new processes, any claims for assistance by local governments that are verified by the state result in the state sharing 50 percent of the costs of the monitoring for indigent defendants.
- Under the proposed legislation, indigent defendants ordered to wear a GPS as a condition of bail would no longer be eligible for state assistance, but would rather be required to pay all costs associated with the system.

- According to Treasury, the department does not track payments as they relate to specific devices within the alternative devices account. Therefore, the precise decrease in expenditures to the EMIF cannot be determined based on historical data.
- The average cost of a GPS monitor is estimated to be \$7 per day.
- Pursuant to the Tennessee Criminal Court Proceedings, Rule 5(c)(2), unless the defendant expressly waives the right to a preliminary hearing, when the defendant pleads not guilty the magistrate shall schedule a preliminary hearing to be held within 14 days if the defendant remains in custody and within 30 days if released.
- For the purposes of this analysis, it is estimated a released defendant will be monitored for an average of 22 days.
- The recurring mandatory increase in expenditures related to additional defendants requiring monitoring is estimated to be \$131,670 [855 offenders x (22 days x \$7 cost)] in FY24-25 and subsequent years.
- As these expenditures will no longer be eligible for assistance from the EMIF, they are assumed to be an increase in local expenditures.
- According to the EMIF Task Force Report of 2022, between 2019-2022, the average number of annual claims for alternative devices received by the Treasury was 925 claims. In 2022, approximately 17 percent of claims were denied.
- The average number of verified claims for alternative devices each year is therefore estimated to be 768 claims [925 claims - (925 claims x 17% denied)].
- It is assumed that approximately one-third of these alternative devices is for GPS monitoring, or 253 claims (768 claims x 33%).
- The average cost for GPS monitoring per defendant while out on bail is estimated to be \$154 (\$7 per day x 22 days).
- The EMIF shares one-half the cost, resulting in a state expenditure of \$77 per defendant (\$154 x 50%).
- The recurring decrease in state expenditures to the EMIF is therefore estimated to be \$19,481 (253 claims x \$77 per claim) in FY24-25 and subsequent years.
- Pursuant to the proposed legislation, these expenditures are now assumed to be the responsibility of local governments.
- Therefore, the total increase in local expenditures is estimated to be \$151,151 (\$131,670 new defendants + \$19,481 existing recurring claims) in FY24-25 and subsequent years.
- Any impacts resulting from the requirements placed on GPS providers, including system functionality and notification requirements, will be borne by private parties.
- It is assumed that counties and municipalities can enter into agreements with GPS providers within existing local resources. Entering into such agreements will not result in additional defendants being required to wear GPS devices under this legislation.
- It is assumed that this legislation will not significantly impact the rates of incarceration due to violating conditions of bail.
- The courts can comply with the proposed requirements in the normal course of business without experiencing a significant increase in expenditures.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista Lee Carsner in black ink.

Krista Lee Carsner, Executive Director

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