

SENATE BILL REPORT

2SSB 5149

As Amended by House, 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: Law & Justice: 1/22/19, 1/24/19 [DPS]; 1/16/20, 1/23/20 [DP2S].
Ways & Means: 2/06/19, 1/14/20 [w/oRec-LAW].

Floor Activity:

Passed Senate: 1/31/20, 45-0.

Passed House: 3/04/20, 96-0.

Brief Summary of Second Substitute Bill

- Defines electronic monitoring to include electronic monitoring with victim notification technology (EMVNT) that is capable of notifying a victim or protected party if the monitored individual is nearby.
- Requires the Administrative Office of the Courts to develop a list of vendors that can provide EMVNT and an informational handout for victims on the availability of EMVNT.
- Gives state and local government immunity from liability for the utilization of EMVNT unless it acted with gross negligence or in bad faith.
- Designates the act as the Tiffany Hill Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Second Substitute Senate Bill No. 5149 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

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: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation and be referred to Committee on Law & Justice.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Corban Nemeth (786-7736)

Background: 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 and includes, but is not limited to:

- radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or
- active or passive global positioning system (GPS) technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location.

A passive GPS stores and transmits data at appointed times to the monitoring agency. In contrast, an active GPS transmits information in near real time on the individual's location to the monitoring agency. This near-real-time transmission theoretically allows an agency to alert someone immediately when a violation occurs. It also provides information on where an individual has been throughout the course of the day and when the offender was at the various locations.

Pursuant to state law, electronic monitoring may be imposed in various circumstances, including:

- as a condition of community custody when the offender was convicted of a sex offense;
- in connection with a conviction for driving under the influence;
- as a condition of pre-trial release;
- at the time of entering a sexual assault protection order, stalking protection order, domestic violence no contact order, or domestic violence protection order; and
- as a penalty for violation of certain domestic violence protections orders, restraining orders, and no contact orders.

In most circumstances, the court may order the person being monitored to pay the costs of electronic monitoring.

Summary of Second Substitute Bill: Electronic monitoring is defined to include EMVNT that is capable of notifying a victim or protected party, either directly or through a monitoring

agency, if the monitored individual is at or near a location from which the monitored individual is required to stay away.

Definitional sections for those protection orders that authorize electronic monitoring are updated to clarify that electronic monitoring has the same meaning provided in the Sentencing Reform Act.

The Administrative Office of the Courts must:

- develop a list of vendors or enter into a contract with a vendor that provides EMVNT; and
- create an informational handout on the opportunity to request EMVNT to be provided to individuals seeking a protection order and for which EMVNT is available.

State and local government are immune from civil liability for damages resulting from the utilization of EMVNT unless the state or local government acted with gross negligence or in bad faith.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Law & Justice) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: Personal experience has made me cognizant of what a few extra minutes might give to a victim of domestic violence. In 2014, domestic violence offenses constituted 51 percent of all offenses against persons. Notice to the victim may be the difference in allowing them time to get away from the perpetrator. The ability to be prepared gives a victim a far better chance of protecting themselves.

OTHER: Domestic violence incidents are terrible and all too common and dangerous. If there is something law enforcement can do to reduce the danger, law enforcement is willing to do that. Law enforcement has a small amount of involvement in electronic monitoring and greater involvement in victim notification. From that experience, we offer two observations. First, technology is incredible, but it is not as accurate as one might think. GPS may register blocks away from where the person actually is; in this circumstance, we cannot afford to be wrong. Second, it is not comfortable telling a victim to trust the technology and that as long as the person is not close to you, you are safe. A victim always needs to be vigilant.

Persons Testifying (Law & Justice): PRO: Senator Lynda Wilson, Prime Sponsor.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Law & Justice) (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: This is the third session this bill has been heard. It now has special meaning as Tiffany Hill was recently killed by her domestic violence perpetrator. Had this law been in place, there is a possibility that Tiffany would still be alive. This technology is being used in several other locations in the United States and in other countries. It is unconscionable that we have not yet taken this step that might give some degree of safety to victims of domestic violence.

Tiffany had been abused by her husband, Keland Hill, for many years and across many states. When she moved to Washington, she obtained a protection order. For 64 days in a row, Keland violated the protection order. He showed up at various places where Tiffany was present. Police eventually found a tracking device he had installed on her van. At that time he was arrested and was in jail for two weeks. The judge eventually set a high bail amount, but he was able to come up with the money. A few days later he went to the school where she worked and shot her. Domestic violence does not just affect the person who is subject to the violence; it affects everyone around them.

Tiffany's case exemplifies what domestic violence looks like. The most dangerous time is when the person is leaving the perpetrator and law enforcement gets involved. Because of the constitutional right to bail, these perpetrators are allowed bail and get released. When that happens, there needs to be the ability to monitor them in the community. The current monitoring system is not happening in real time. Law enforcement will hear about a violation weeks later from the monitoring company. With real time monitoring, a victim would have time to run or call the police. Keland Hill waited in the parking lot for 30 minutes before Tiffany left the school. This technology would have alerted her to call the police before going into the parking lot.

Persons Testifying (Law & Justice): PRO: Senator Lynda Wilson, Prime Sponsor; James Schrimpsner, Chief of Police, City of Algona; Lauren Boyd, Clark County Prosecuting Attorney's Office; Tanya Wollstien, Vancouver Police Department; Isaiah Knight, citizen; Rene Sundby, citizen; Melissa Nelson, citizen.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

EFFECT OF HOUSE AMENDMENT(S): The definition of electronic monitoring in the Sentencing Reform Act is modified to describe victim notification technology that is capable of notifying a protected party when a monitored individual enters within a restricted distance of a protected person or place, rather than when the monitored individual is at or near a location from which they are required to stay away.