



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 112 of the 128th G.A.

Date: June 1, 2010

Status: As Introduced

Sponsor: Rep. Domenick

Local Impact Statement Procedure Required: No — Permissive

Contents: Protection orders and GPS monitoring

State Fiscal Highlights

STATE FUND	FY 2011 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential minimal annual incarceration cost increase
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Minimal annual effect on locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Minimal annual effect on locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2011 is July 1, 2010 – June 30, 2011.

- **Department of Rehabilitation and Correction.** The Department of Rehabilitation and Correction's GRF-funded incarceration costs may increase minimally, as a few additional offenders each year may be convicted of a felony violation of a criminal protection order and subsequently sentenced to a prison term.
- **Court cost revenues.** It is uncertain whether the state will gain or lose court cost revenues deposited in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), but the magnitude of that potential gain or loss is likely to be no more than minimal annually.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2011 – FUTURE YEARS

County and Municipal Criminal Justice Systems Generally

Revenues

Minimal annual effect on court costs and fines

Expenditures

(1) Potential increase to monitor indigent alleged offenders, annual magnitude uncertain;
(2) Annual effect on costs to process and sanction criminal protection order violators uncertain

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Electronic monitoring systems.** The annual costs that a court or affiliated law enforcement entity may incur to monitor certain alleged offenders, if such offenders are indigent, is uncertain.
- **Criminal justice systems generally.** Whether, as a result of court-ordered monitoring, the number of persons arrested and convicted of violating a protection order will increase or decrease is uncertain, which means that the effects on a county or municipal criminal justice system's annual case processing and sanctioning costs is uncertain. It is also uncertain whether a county or municipality will gain or lose court cost and fine revenues, but the magnitude of that potential gain or loss is likely to be no more than minimal annually.

Detailed Fiscal Analysis

GPS monitoring

The fiscal effect, if any, of the bill's GPS monitoring provisions on the annual operating expenses of local courts and affiliated law enforcement entities is uncertain. This is because: (1) the court is permitted, but not required, to include a GPS monitoring requirement, (2) there is no readily available data on the number of criminal protection orders issued in Ohio annually that could suggest the number of alleged offenders that might be subject to a GPS monitoring requirement, and (3) the bill is silent in regard to who would pay for the cost of GPS monitoring if an alleged offender is indigent.

While the bill states that the cost monitoring is to be paid by the alleged offender, it seems reasonable to assume that some portion of those alleged offenders are likely to be indigent and will not be able to pay these costs. In these instances, the bill does not specify who is responsible for paying for the alleged offender's monitoring costs. Current practice would suggest, however, that, if the court was to order GPS monitoring and the alleged offender is indigent, the court or affiliated law enforcement entity will pay the cost of the monitoring. As there is no available data from which one could estimate the potential size of the indigent population that might be subject to monitoring, the magnitude of the potential annual monitoring costs for a court or affiliated law enforcement entity is uncertain.

The bill permits the judge who authorizes a temporary criminal protection order in specified criminal cases to require the use of a global positioning system as a condition of pretrial release. A temporary criminal protection order is issued during a criminal trial and expires at the conclusion of that trial. The violations for which this monitoring would be applicable include, but are not limited to, felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, or any sexually oriented offense. Based on 2009 data for the Franklin County Municipal Court alone, the number of offenders that were charged with violations that the court would have been permitted to require monitoring was in the range of 8,000 to 9,000.

GPS devices use global positioning satellites to track a person's location in the community. These devices are able to transmit data to the monitoring jurisdiction ranging from every few seconds to once a day. Active GPS monitoring is generally more expensive to administer than passive GPS systems, which require manual data downloads at a base station, perhaps daily, or at some other interval of time as determined by the monitoring agency. LSC fiscal staff's latest research indicates that the cost of GPS monitoring ranges from \$5 to \$18 per day, with "active" monitoring being on the more expensive end of this cost spectrum in comparison to what can be termed "passive" monitoring.

It is likely that the court would direct the appropriate law enforcement entity to install the monitoring device and monitor the respondent. It is unclear whether law enforcement would contract out all or some portion of the associated duties and responsibilities to private sector vendors. Also unclear is who is responsible for the billing and collecting of costs from monitored offenders, and if some offenders are determined to be indigent, how those costs will be absorbed.

Protection order violations

Local criminal justice system expenditures

It is uncertain as to whether, as a result of pretrial release monitoring, the number of alleged offenders charged with and convicted of protection order violations will increase or decrease for any given county or municipal criminal justice system. Thus, whether a county or municipal criminal justice system's annual costs to prosecute and sanction protection order violators will increase or decrease is uncertain, as is the possible magnitude of that change.

If a court requires certain alleged offenders to be monitored as a condition of pretrial release, the following contrasting outcomes and related expenditure effects on any given county or municipal criminal justice system seem plausible:

- The local criminal justice system could realize an "expenditure savings" resulting from a decrease in protection order violations, as alleged offenders realize monitoring increases the likelihood of being arrested and prosecuted and choose not to violate the conditions of their pretrial release;
- The local criminal justice system could realize an "expenditures savings," as alleged offenders who would have been charged with violating a protection order whether subject to a monitoring requirement or not may be more easily apprehended and prosecuted utilizing the evidence gathered by means of a monitoring device;
- The local criminal justice system could experience an "expenditure increase," as the monitoring requirement may increase the number of protection order violations by providing information on alleged offenders whose violation of their conditions of pretrial release might otherwise have gone undetected.

The net effect of these contrasting outcomes for any given county or municipal criminal justice system is uncertain. Based on 2009 data for the Franklin County Municipal Court alone, the number of protection order violation charges filed with that court was in the range of 700 to 800. It is unclear how many of those violations involved alleged offenders on pretrial release that the court could have required to be monitored had the bill been in effect at that time. Analogous data on the number of protection order violation charges filed annually statewide is not readily available.

Revenues generally

The bill will have a minimal annual effect on state court cost and local court cost and fine revenues. If, as a result of being subject to a monitoring requirement, certain alleged offenders that might otherwise have violated a temporary protection order do not violate that order, then the state, counties, and municipalities may lose court cost and fine revenues that might otherwise have been paid by those offenders had they been convicted of such a violation. Conversely, if, as a result of being subject to a monitoring requirement, certain alleged offenders are arrested and convicted for a protection order violation that might have gone undetected, then the state, counties, and municipalities may gain court cost and fine revenues that would otherwise not have been collected. It is important to note that courts rarely impose the maximum permissible fine, and that many offenders are unwilling or unable to pay.

"State court costs" are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. For a nonmoving traffic violation, the court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

State incarceration expenditures

As a result of monitoring, it is possible that a few additional offenders could be convicted of a felony violation of a temporary protection order and sentenced to prison each year than might otherwise have been the case under current law. In theory, the fiscal effect of such an outcome may be a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs. As of May 2010, the annual average cost associated with housing and providing services to an offender in prison was \$25,339, or \$69.42 per day. The experience of the Franklin County Municipal Court suggests that the vast majority of temporary protection order violations are charged as misdemeanors for which the possible term of incarceration would be time served in a local jail. Only offenders convicted of a felony temporary protection order could be sentenced to a possible term of incarceration in a state prison.