



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 26, 2009

Joint Committee on Finance

Paper #295

Sex Offender Management (Corrections -- Adult Community Corrections)

[LFB 2009-11 Budget Summary: Page 220, #1]

CURRENT LAW

GPS Tracking

Under current law, the Department of Corrections is required to provide lifetime global positioning system (GPS) tracking for serious child sex offenders. "Lifetime tracking" is defined as GPS tracking that is required for a person for the remainder of the person's life or until terminated. GPS tracking is defined as a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone.

The Department may track a person using passive positioning system tracking if the person: (a) completes his or her sentence, including any probation, parole or extended supervision; or (b) is monitored with GPS tracking at the Department's discretion, but tracking is not required by statute. Passive positioning system tracking is defined as a system that monitors, identifies, and records a person's location.

Sex Offender Registry

Under current law, the Department maintains a sex offender registry, containing information related to persons who have been found to have committed a sex offense or committed an offense with a sexual motivation. Information on the registry that is available to the public over the Internet includes the offender's name and address, a physical description, the crimes for which the offender is required to register, a current photograph, and whether or not the offender is compliant with the registry.

Further, effective April 1, 2009, statutes provide that if a person is convicted of a felony that requires him or her to register, and the victim was under 18 years of age at the time of the offense, the court may order the Department to conduct a presentence investigation report to assess whether the person is at risk for committing another sex offense.

GOVERNOR

Provide \$2,192,600 GPR and 44.5 GPR positions and \$9,700 PR in 2009-10, and \$6,225,900 GPR and 92.0 GPR positions and \$37,400 PR in 2010-11 to manage the Department's sex offender population. Staffing would be provided for the Department's Monitoring Center, which tracks offenders on electronic monitoring equipment, the sex offender registry, and for presentence investigation evaluators.

Further, allow the Department to use passive positioning tracking instead of active GPS tracking for certain individuals, if the Department determines that passive positioning tracking is appropriate for the person and if the person has been subject to active GPS tracking for at least 12 months.

DISCUSSION POINTS

Current Law - GPS Tracking

1. Under current law, the Department of Corrections is required to provide for lifetime GPS tracking for certain child sex offenders, as follows:

a. Persons placed on supervised release (Chapter 980) or conditional release (Chapter 971), or discharged under Chapters 980 and 971 of the statutes, for a serious child sex offense on or after the January 1, 2008;

b. Persons placed on lifetime supervision under s. 939.615 of the statutes for a serious child sex offense on or after January 1, 2008;

c. Persons for whom a special bulletin notification is issued on or after January 1, 2008. Special bulletin notifications are issued when an offender is released to the community, who was convicted, or found not guilty or not responsible by reason of mental disease or defect, on two or more separate occasions of a sex offense;

d. Persons released from prison, or to extended supervision or parole, on or after January 1, 2008, for one of the following serious child sex offenses: (a) sexual contact or intercourse with a person who has not attained the age of 13 years and causes great bodily harm, if the person is not a relative; and (b) sexual intercourse with a person who has not attained the age of 12 years, if the person is not a relative; and

e. Persons convicted, on or after January 1, 2008, who are released from prison, or to

extended supervision or parole, for one of the following serious child sex offenses: (a) sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence, if the person is not a relative; and (b) sexual contact with a person who has not attained the age of 16 years by use of threat of force or violence, if the person is not a relative.

2. If a person is placed on probation, extended supervision, parole or lifetime supervision for committing a sex offense, but does not fall under one of the above-described categories, the Department may have the person tracked as a condition of his or her probation, extended supervision, parole, or lifetime supervision.

3. For lifetime tracking, the Department is required to utilize a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. The Department currently contracts with BI Technologies, Inc. for GPS tracking services and equipment. Offenders carry around a small unit that tracks and records their whereabouts once per minute. Every ten minutes, the tracking device sends the cumulative data to the Department, which can track offenders' movements on a computer screen. If an offender is in an exclusion zone or departs from an inclusion zone, an alert is issued immediately. The Department initially will assess whether the alert is an equipment malfunction, then contact the agent or law enforcement if equipment is working properly. For active GPS tracking, BI Technologies currently charges the Department \$7.99 per day per unit.

4. The Department may utilize passive positioning system monitoring if the person: (a) completes his or her sentence, including any probation, parole or extended supervision; or (b) is monitored with GPS tracking at the Department's discretion, but tracking is not required by statute. Like active GPS tracking, passive positioning system tracking tracks a person's whereabouts once per minute. However, instead of sending the cumulative data to the Department every ten minutes, data is sent twice a day (every 12 hours). The Department will then retroactively address any alerts that occurred during that time period. For passive positioning system tracking, BI Technologies currently charges the Department \$4.50 per day per unit.

5. Current base funding for GPS tracking is \$4,454,400 GPR and 71.10 GPR positions and \$315,700 PR. Attachments 1 and 2 provide more detail on the statutory definitions related to the GPS tracking provisions [Attachment 1] and the individuals for whom GPR tracking is required [Attachment 2].

Current Law - Sex Offender Registry

6. Under current law, the Department of Corrections is required to maintain a sex offender registry. The registry contains information relating to persons who have been found to have committed a sex offense or an offense with a sexual motivation. Registry information that is available to the public over the Internet includes the offender's name and address, a physical description, the crimes for which the offender is required to register, a current photograph, and whether or not the offender is compliant with the registry.

7. In addition, under 2007 Act 80, statutory language was created that provides if a person is convicted for a felony that requires the person to register on the sex offender registry, and the victim was under 18 years of age at the time of the offense, the court may order the Department to conduct a presentence investigation to assess whether the person is at risk for committing another sex offense. This statutory language became effective April 1, 2009.

8. Base funding in 2008-09 for the sex offender registry is \$1,926,500 GPR and 23.5 GPR positions and \$128,900 PR. As of May, 2009, the sex offender registry contained 20,814 records. Of this number, 5,655 offenders were in correctional institutions, 4,821 offenders were in the community under supervision, 8,459 individuals were required to register but released from supervision, and 1,879 were juvenile registrants under the age of 18.

Assembly Bill 75

9. The bill would provide \$2,192,600 GPR and 44.5 GPR positions and \$9,700 PR in 2009-10 and \$6,225,900 GPR and 92.0 GPR positions and \$37,400 PR in 2010-11 to manage the increasing sex offender population under the Department's supervision. The new staffing in 2010-11 would include: (a) monitoring center staff (the monitoring center unit tracks offenders on electronic monitoring equipment), 35.75 corrections communications operators and 2.25 supervisors; (b) community corrections staffing, 29.0 probation and parole agents, 3.0 supervisors, 10.0 office operations staff, and 1.0 business office financial specialist; (c) sex offender registry staff, 4.0 corrections program specialists for sex offender registration, 1.0 for program administrator, 1.0 supervisor and 2.0 office operations staff; and (d) for presentence investigations related to risk assessments for certain sex offenders, as provided under 2007 Act 80, 3.0 psychologists.

10. In addition to funding and staffing, the bill would modify statutory language to allow the Department to utilize passive positioning system tracking for individuals described under discussion point 1, categories d. and e., if the Department determines that passive positioning system tracking is appropriate and if the person has been subject to active tracking for at least one year.

11. Related to the sex offender registry, AB 75 would provide staffing to handle anticipated additional workloads as the result of the growing number of registrants. The number of individuals required to register on the sex offender registry increases on average by 120 registrants per month. Work associated with sex offender registry correctional program specialist includes case tracking and development, monitoring registry compliance, verification of information, dissemination of special bulletin notifications, working with local law enforcement officials to plan and conduct local community meetings, and work associated with non-compliant registrants (for example, investigations, reports, and court appearances). Funding and staffing in the bill appear appropriate, based on the responsibilities of the sex offender registry and the anticipated increases to registrants.

12. Related to funding for presentence investigations, 2007 Act 80 provided that if a person is convicted of an offense for which he or she is required to register on the sex offender

registry and the victim was under the age of 18 at the time of the offense, then the court may order the Department to conduct a presentence investigation to assess whether to person is at risk for committing another sex offense. The provision became effective on April 1, 2009. While presentence investigations are typically completed by probation and parole agents, the Department indicated that agents do not possess the level of expertise to assess and predict a person's risk of committing future sex offenses. As such, the bill would provide 3.0 psychologist positions to conduct an estimated 876 presentence investigations annually. Staffing is based on a review of 2005-06 admissions for applicable sex offenses and assumes that each presentence investigation will take approximately six hours.

13. Related to funding for GPS tracking, the bill provides increased funding and staffing associated with the projected new population of individuals who will require GPS tracking in the 2009-11 biennium. While the Department estimated an additional population of 248 individuals annually who will require GPS tracking, funding for this provision would support an additional population of 169 individuals in 2009-10 and 248 in 2010-11. This funding calculation is the result of revised projections for the current population in 2008-09, for which full funding is provided in the bill under a separate provision.

14. The GPS monitoring program began on January 1, 2008. As a result, the original population projections provided in the budget bill were based on less than a year's worth of data. The Department has since been able to collect and evaluate several more months of data on the populations in the GPS monitoring program. Based on the additional data, more recent population trends indicate that the projections could be reduced from an estimated increase of 248 individuals annually to an estimated increase of 126 individuals annually. As a result, the total population estimated to be tracked by GPS monitoring would be 325 individuals by the end of 2009-10 and 450 individuals by the end of 2010-11.

15. Based on revised population projections, funding and staffing in the bill could be modified by -\$1,425,500 GPR and -34.50 GPR positions and -\$9,700 PR in 2009-10, and -\$3,619,400 GPR and -56.75 GPR positions and -\$31,200 PR in 2010-11. Staffing related to the GPS monitoring program in 2010-11 would include: (a) monitoring center staff, 9.5 corrections communications operators and 0.75 supervisor; and (b) community corrections staffing, 10.0 probation and parole agents, 0.5 supervisor, 2.5 office operations staff, and 1.0 business office financial specialist. [Alternative 2] [Funding and staffing associated with the sex offender registry and the presentence investigations would remain the same.]

16. Funding in the bill also assumes that a portion of the population will be passively tracked, if the Department determines passive tracking is appropriate and the individual has been actively tracked for at least one year. While it is unknown how many individuals the Department would determine appropriate for passive tracking, for the purposes of funding in the bill, it is estimated that 25% of the population would be passively tracked after at least one year on active tracking. If the Committee wishes to maintain current law and delete the passive tracking provision, funding could be modified by -\$1,379,000 GPR and -34.50 GPR positions and -\$9,700 PR in 2009-10 and -\$3,559,100 GPR and -56.75 GPR positions and -\$28,100 PR in 2010-11 (this change

assumes the revised population projections discussed above, and staffing would be the identical).
 [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$2,192,600 GPR and 44.5 GPR positions and \$9,700 PR in 2009-10 and \$6,225,900 GPR and 92.0 GPR positions and \$37,400 PR in 2010-11 to manage the Department's sex offender population. Allow the Department to use passive positioning system tracking instead of active GPS tracking for certain offenders if the Department determines that passive positioning system tracking is appropriate for the person and if the person has been subject to active GPS tracking for at least 12 months.

2. Modify the Governor's recommendation by -\$1,425,500 GPR and -\$12,100 PR and -34.50 GPR positions in 2009-10, and -\$3,619,400 GPR and -\$31,200 PR and -56.75 GPR positions in 2010-11 based on revised population projections. Staffing in 2010-11 would include: (a) Monitoring Center Staff, 9.5 corrections communications operators and 0.75 supervisor; (b) community corrections staffing, 10.0 probation and parole agents, 0.5 supervisor, 2.5 office operations staff, and 1.0 business office financial specialist; (c) sex offender registry staff, 4.0 corrections program specialists, 1.0 for program administrator, 1.0 supervisor and 2.0 office operations staff; and (d) presentence investigations evaluations, 3.0 psychologists.

ALT 2	Change to Bill	
	Funding	Positions
GPR	-\$5,044,900	- 56.75
PR	<u>- 43,300</u>	<u>0.00</u>
Total	-\$5,088,200	- 56.75

3. Delete the provision related to passive positioning system tracking and maintain current law. Modify the Governor's recommendation by -\$1,379,000 GPR and -\$9,700 PR and -34.50 GPR positions in 2009-10 and -\$3,559,100 GPR and -\$28,100 PR and -56.75 GPR positions in 2010-11.

ALT 3	Change to Bill	
	Funding	Positions
GPR	-\$4,938,100	- 56.75
PR	<u>- 37,800</u>	<u>0.00</u>
Total	-\$4,975,900	- 56.75

Prepared by: Chris Carmichael
 Attachment

ATTACHMENT 1

Statutory Definitions

Offense/Term	Description/Definition
Serious Child Sex Offense	A level 1 or level 2 child sex offense
Level 1 Child Sex Offense	<p>First- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault against the same child, if any of the following occurs:</p> <p>(a) The actor has sexual contact or sexual intercourse with an individual who is not a relative of the actor and who has not attained the age 13 years and causes great bodily harm to the individual; or</p> <p>(b) The actor has sexual intercourse with an individual who is not a relative of the actor and who has not attained the age of 12 years.</p>
Level 2 Child Sex Offense	<p>First- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault against the same child, if any of the following occurs:</p> <p>(a) The actor has sexual intercourse, by use or threat of force or violence, with an individual who is not a relative of the actor and who has not attained the age of 16 years; or</p> <p>(b) The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained the age of 16 years and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.</p>
First Degree Sexual Assault of a Child	<p>(a) Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person. Class A Felony</p> <p>(b) Whoever has sexual intercourse with a person who has not attained the age of 12 years. Class B Felony</p> <p>(c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence. Class B Felony</p> <p>(d) Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence, if the actor is at least 18 years of age when the sexual contact occurs. Class B Felony</p> <p>(e) Whoever has sexual contact with a person who has not attained the age of 13 years. Class B Felony</p>
Second Degree Sexual Assault of a Child	Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years. Class C Felony
Engaging in Repeated Acts of Sexual Assault of the Same Child	<p>(a) Whoever commits three or more violations of first- or second-degree sexual assault of a child:</p> <p style="padding-left: 40px;">(i) At least three violations of first-degree sexual assault of a child described under (a) above. Class A Felony</p>

Offense/Term	Description/Definition
	<p>(ii) At least three violations of first-degree sexual assault of a child described under (a), (b) or (c) above. Class B Felony</p> <p>(iii) At least three violations of first-degree sexual assault of a child described under (a), (b), (c), or (d) above. Class B Felony</p> <p>(iv) At least three violations of first-degree sexual assault. Class B Felony</p> <p>(v) At least three violations of first- or second-degree sexual assault of a child. Class C Felony</p>
Great Bodily Harm	Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
Sexual Contact	<p>(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant: (i) intentional touching by defendant or, upon defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate body parts; or (ii) intentional touching by complainant, by the use of any body part or object, of defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person;</p> <p>(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant; or</p> <p>(c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.</p>
Sexual Intercourse	Vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

ATTACHMENT 2

Persons Requiring GPS Tracking

Under current law, the Department is required to maintain lifetime GPS tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

- a. A court places the person on probation for committing a level 1 child sex offense;
- b. The person is convicted for committing a level 2 child sex offense and the court places the person on probation for committing the offense;
- c. The Department releases the person to extended supervision or parole while the person is serving a sentence for committing a level 1 child sex offense;
- d. The person is convicted for committing a level 2 child sex offense and the Department releases the person to extended supervision or parole while the person is serving the sentence for committing the offense;
- e. The Department releases the person from prison upon the completion of a sentence for a level 1 child sex offense;
- f. The person is convicted for committing a level 2 child sex offense and the Department releases the person from prison upon the completion of the sentence imposed for the offense;
- g. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect places the person on conditional release;
- h. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect discharges the person from conditional release (this does not apply to a person on conditional release immediately before being discharged);
- i. The court places a person on lifetime supervision under s.939.615 for committing a serious child sex offense and the person is released from prison;
- j. A police chief or sheriff receives a special bulletin notification regarding the person (special bulletin notifications are issued when a person is released who was convicted, or found not guilty or not responsible by reason of mental disease or defect, on two or more separate occasions of a sex offense);
- k. If a person who committed a serious sex offense, or a person under supervision under the interstate corrections compact for a serious child sex offense, is not subject to lifetime tracking under one of other categories, and the Department of Corrections has assessed the person's risk using a standard risk assessment instrument and determined GPS tracking is appropriate.
- l. A court places the person on supervised release under Chapter 980 of the statutes;
- m. A court discharges the person from supervised release (this does not apply to a person on supervised release immediately before being discharged);
- n. The Department of Health Services places the person on parole or discharges the person under Chapter 975 (Sex Crimes Law) (this does not apply unless the person's commitment was based on his or her commission of a serious child sex offense).