



## Legislative Fiscal Bureau

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May 13, 2013

Joint Committee on Finance

Paper #230

### **Additional Funding and Positions for GPS and Electronic Monitoring of Offenders (Corrections -- Community Corrections)**

[LFB 2013-15 Budget Summary: Page 131, #1]

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#### **CURRENT LAW**

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. Current law defines GPS tracking as a system that actively monitors and identifies a person's location and timely reports or records the person's presence at or near 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.

Further, under 2011 Act 266, a court may order GPS tracking for persons who violate a domestic abuse or harassment temporary restraining order or injunction. A court may also request the Department to provide a validated risk assessment of the person. In order to offset GPS tracking costs, the act also created a new PR appropriation to deposit revenues from a \$200 surcharge from individuals who violate a temporary restraining order or injunction, as well as a GPS equipment fee. The provisions of Act 266 will become effective on January 1, 2014.

#### **GOVERNOR**

Provide \$2,608,400 GPR and 27.5 GPR positions and \$42,600 PR in 2013-14 and \$4,219,800 GPR and 38.75 GPR positions and \$138,600 PR in 2014-15 for increased staffing

and funding associated with electronic monitoring of certain offenders in the community. Of the funding \$568,000 GPR and \$42,600 PR in 2013-14 and \$818,800 GPR and \$138,600 PR in 2014-15 would be utilized for increased GPR equipment, and \$755,700 GPR annually for increased equipment for OWI offenders, including transdermal alcohol monitoring (TADs), sobrieters, and electronic monitoring units.

## **DISCUSSION POINTS**

1. The Department's Division of Community Corrections operates a Monitor Center to provide centralized electronic monitoring services to the Division of Community Corrections, Division of Juvenile Corrections, county and local law enforcement, and county human services departments. Electronic monitoring equipment includes radio frequency units, sobrieters, transdermal alcohol devices, and GPS monitoring units. In April, 2013, the Monitoring Center was tracking a total of 2,867 offenders on monitoring equipment. Base funding for the Monitor Center is \$7,205,900 GPR and 81.0 GPR positions and \$490,100 PR and 6.20 PR positions.

### **GPS Monitoring for Child Sex Offenders**

2. Under current law, the Department of Corrections is required to provide 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.

3. 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.

4. 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 15 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 \$6.15 per day per unit.

5. 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 then retroactively addresses any alerts that occurred during that time period. For passive positioning system tracking, BI Technologies currently charges the Department \$4.49 per day per unit.

6. Attachments 1 and 2 provide more detail on the statutory definitions related to the GPS tracking provisions (Attachment 1) and the individuals for whom GPS tracking is required (Attachment 2).

### **GPS Tracking for Certain Temporary Restraining Order (TRO) Violations**

7. Under 2011 Act 266, if a person knowingly violates a temporary restraining order or injunction, the court may report the violation to the Department of Corrections immediately upon the person's conviction and order the person to submit to GPS tracking. The applicable temporary restraining orders and/or injunctions include: (a) domestic abuse restraining orders and injunctions; (b) child abuse restraining orders and injunctions; (c) restraining orders and injunctions for individuals at risk; and (d) harassment restraining orders and injunctions.

8. Before issuing such an order, the court must find that the person is more likely than not to cause seriously bodily harm to the person who petitioned for the restraining order or injunction, weighing the following factors: (a) whether the person has allegedly caused physical injury, intentionally abused pets or damaged property, or committed sexual assault, an act of strangulation or forcible entry to gain access to the petitioner; (b) whether the person has threatened any individual, including the petitioner, with harm; (c) whether the person has a history of improperly using or threatening to use a firearm or other dangerous weapon; (d) whether the person

has expressed suicidal ideation; (e) whether the person has exhibited obsessive or controlling behavior toward the petitioner or any member of the petitioner's family, including stalking, surveillance, or isolation of the petitioner or any member of the petitioner's family; (f) the person's mental health history; and (g) whether the person has a history of abuse alcohol or a controlled substance.

9. The court may require the Department to provide a validated risk assessment of the person in order to make the above findings. Further, the court may request a domestic violence prevention treatment center in the court's county to complete a danger assessment of the person in order to make the above findings. If the court orders the person to submit to GPS tracking, the court must provide the person who petitioned for the restraining order or injunction with a referral to a domestic violence or sexual assault victim service provider.

10. If after weighing the factors above, the court determines the person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, and the court determines that another alternative, including imprisonment, is more likely to protect the person who petitioned for the restraining order or injunction, the court may not enter an order for GPS tracking.

11. For each individual ordered by the court for GPS tracking, the court must impose a GPS tracking surcharge of \$200 for each offense. Further, the Department must determine the person's ability to pay the costs and tracking and require the person to pay those costs. Monies collected from the surcharge are to be deposited into an appropriation to support GPS costs. If revenue collected is inadequate to fund the GPS program, Corrections may, by rule, increase the surcharge by not more than 5% each year to cover program costs.

### **OWI Offenders**

12. In addition to offenders who require GPS monitoring, the Department also monitors offenders in the community who have been convicted of drunk driving offenses, fourth offense and higher. Under 2009 Act 100, which modified various drunk driving provisions, a new appropriation was created under Corrections to provide community probation supervision, fund the Monitoring Center, and fund enhanced community treatment for offenders convicted of a second or third drunk driving offenses. As a result of Act 100, the Department provides sobriety and transdermal alcohol devices for second and third drunk driving offenders. As a matter of policy, the Department also began to utilize sobriety and transdermal alcohol devices for offenders with fourth offense drunk driving convictions or higher, funded from other existing resources.

### **Assembly Bill 40**

13. The bill would provide \$2,608,400 GPR and 27.5 GPR positions and \$42,600 PR in 2013-14 and \$4,219,800 GPR and 38.75 GPR positions and \$138,600 PR in 2014-15 for increased staffing and funding for GPS and other electronic monitoring costs as identified in the table below. Staffing would include 10.75 correctional communications operators (9.5 for sex offender tracking and 1.25 for TRO tracking) and 28.0 probation and parole agents (20.5 for sex offender tracking and 7.5 for TRO tracking).

	2013-14			2014-15		
	<u>Funding</u>	<u>FTE</u>	<u>Funding Source</u>	<u>Funding</u>	<u>FTE</u>	<u>Funding Source</u>
<i>GPS - Certain Child Sex Offenders</i>						
Staffing & Positions	\$986,200	21.50	GPR	\$2,013,300	30.00	GPR
Monitoring Equipment	568,000		GPR	818,800		GPR
Monitoring Equipment	29,100		PR	42,000		PR
<i>GPS - TRO Violations</i>						
Staffing & Positions	298,500	6.00	GPR	632,000	8.75	GPR
Monitoring Equipment	13,500		PR	96,600		PR
<i>OWI Monitoring Equipment</i>	<u>755,700</u>		GPR	<u>755,700</u>		GPR
Total	\$2,608,400	27.50	GPR	\$4,219,800	38.75	GPR
	42,600		PR	138,600		PR

14. Funding in the bill assumes that the number of individuals requiring GPS tracking will increase to 783 in 2013-14 and 939 in 2014-15. Of the total, 762 individuals in 2013-14 and 877 individuals in 2014-15 are estimated to be for GPS monitoring of certain child sex offenders, which is based on the actual average monthly population growth for the past three years. The remaining 21 individuals in 2013-14 and 62 individuals in 2014-15 are associated with GPS monitoring of individuals convicted of violating a TRO. For the population of individuals with TRO violations, the Department estimated that 5% of those convicted each month would be required for GPS monitoring.

15. Staffing was determined, based on the workload to manage offenders on monitoring equipment, including Monitoring Center staff and field supervision staff. The Monitoring Center's correctional community operators enter offenders' schedules, review and investigate GPS equipment alerts, notify agents or law enforcement in the event of exclusion zone violations, and pursue warrants if necessary. The Monitoring Center is currently staffed to monitor approximately 525 GPS offenders. With the GPS population estimated to increase to 783 in 2013-14 and 939 in 2014-15, Corrections would need an additional 10.75 positions. Based on standard caseload calculations, the 28.0 probation and parole agents statewide are recommended to ensure that equipment is properly installed on the offender, supervise the offender as part of the agent's overall caseload, respond to alerts from the Monitoring Center, and apprehend the offender with assistance of law enforcement if necessary.

16. Regarding electronic monitoring equipment funding, the Department currently contracts with BI Technologies, Inc. to provide tracking equipment and services for its Monitoring Center. The bill would provide \$1,323,700 GPR and \$42,600 PR in 2013-14 and \$1,574,500 GPR and \$138,600 PR in 2014-15 for total equipment costs for the increase in monitored populations, including: (a) \$568,000 GPR and \$42,600 PR in 2013-14 and \$818,800 GPR and \$138,600 PR in 2014-15 for increased GPS equipment; and (b) \$755,700 GPR annually for increased equipment for OWI offenders, including transdermal alcohol monitoring for 51 offenders, and sobriety and electronic monitoring units for 123 offenders. Funding for GPS equipment is based on the current

contract rates of \$6.15 for active monitoring, and \$4.49 for passive monitoring. Program revenue funding is from revenues received from offenders monitored by GPS tracking. For certain child sex offenders, the Department charges the offender for costs that Corrections has determined the offender is able to pay. For TRO violators, a \$200 surcharge is assessed to cover equipment costs.

17. The estimated GPS populations for certain child sex offenders were based on actual population data through April, 2012. More recent population data is now available, which indicates a higher average monthly population growth than previously indicated. Utilizing the more recent data, the estimated population for GPS monitoring of certain child sex offenders would be 810 individuals in 2013-14 and 938 individuals in 2014-15 (compared to the bill's 762 individuals in 2013-14 and 877 individuals in 2014-15). As a result of the higher GPS population, additional funding and staffing of \$241,200 GPR and 3.5 GPR positions and \$4,700 PR in 2013-14, and \$415,100 GPR and 4.5 GPR positions and \$6,200 PR in 2014-15 would be needed. Including in the increase is \$91,100 GPR and \$4,700 PR in 2013-14 and \$120,000 GPR and \$6,200 PR in 2014-15 for additional GPS equipment. [Alternative 2]

18. Regarding funding for equipment for OWI offenders (\$755,700 GPR annually), Corrections has been utilizing existing resources to fund monitoring equipment for OWI offenders with a fourth offense or more in order to provide consistent supervision for more serious OWI offenses. To cover those equipment costs over the past two years, the Department has utilized funding from several appropriations, including services for community corrections, probation and parole and extended supervision, interagency and intra-agency programs, sex offender management, and GPS tracking devices. Since the Department has managed to cover these costs utilizing existing resources, the Committee may wish to delete this funding, and require the Department to continue to utilize existing resources. [Alternative 3] To the extent, however, that resources are not available, less equipment related to OWI offenders may be purchased.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to provide \$2,608,400 GPR and 27.5 GPR positions and \$42,600 PR in 2013-14 and \$4,219,800 GPR and 38.75 GPR positions and \$138,600 PR in 2014-15. For anticipated increases for GPS tracking. Of the funding \$568,000 GPR and \$42,600 PR in 2013-14 and \$818,800 GPR and \$138,600 PR in 2014-15 would be utilized for increased GPR equipment, and \$755,700 GPR annually for increased equipment for OWI offenders, including transdermal alcohol monitoring (TADs), sobrietyors, and electronic monitoring units.

2. Modify the Governor's recommendation by \$241,200 GPR and 3.5 GPR positions and \$4,700 PR in 2013-14, and \$415,100 GPR and 4.5 GPR positions and \$6,200 PR in 2014-15 as a result of reestimated GPR populations, based on more recent data. Total funding in the bill would be \$2,849,600 GPR and 31.0 GPR positions and \$47,300 PR in 2013-14 and \$4,634,900 GPR and 43.25 GPR positions and \$144,800 PR in 2014-15 to monitor a total GPS tracking population of 831 individuals in 2013-14 and 1,000 individuals in 2014-15.

<b>ALT 2</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	\$656,300	4.50
PR	<u>10,900</u>	<u>0.00</u>
Total	\$667,200	4.50

3. In addition to either Alternative 1 or Alternative 2 above, delete \$755,700 GPR annually associated with equipment costs for electronic monitoring of OWI offenders.

<b>ALT 3</b>	<b>Change to Bill</b>	
	Funding	
GPR	- \$1,511,400	

4. Delete provision.

<b>ALT 3</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	- \$6,828,200	- 38.75
PR	<u>- 181,200</u>	<u>0.00</u>
Total	- \$7,009,400	- 38.75

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Attachments



# 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).