

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1506 by Herrero (Relating to the imposition of conditions on certain defendants charged with an offense involving family violence.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend Article 17.292, Code of Criminal Procedure, to authorize a magistrate to include in an order for emergency protection a requirement that the person arrested for family violence participate in a global positioning monitoring system or allowing participation in the system by a victim or other person protected under the order, as described in SECTION 2 of the bill.

The bill would add Article 17.49 to the Code of Criminal Procedure to authorize a magistrate to require as a condition of release on bond that a defendant charged with an offense involving family violence to carry or wear a global positioning monitoring system device and to pay no more than \$75 per month for the costs associated with operating the system in relation to the defendant. Or, the magistrate may require the defendant to pay the costs associated with providing the victim with an electronic receptor device that meets certain criteria, if the victim agrees. A magistrate would also be authorized to allow a defendant to perform community service in lieu of paying the costs required if the magistrate determines the defendant is indigent. A magistrate imposing one of these conditions must afford the alleged victim an opportunity to provide a list of areas from which the defendant should be prohibited. The magistrate would also be required to provide the alleged victim with victim rights information.

The bill would also stipulate that the changes added by the bill would apply only to a defendant released on bond or to an order for emergency protection issued on or after the effective date of the bill, which would be September 1, 2009.

The bill would amend the Code of Criminal Procedure to authorize a court to require a defendant to participate in an electronic monitoring program, or a house arrest program rather than be confined in a county jail if the program is operated by a community supervision and corrections department (CSCD) that serves the county in which the court is located, and the program is approved by the Community Justice Assistance Division of the Texas Department of Criminal Justice (TDCJ-CJAD), a commissioners court, or a private vendor under contract with the commissioners court. Under current statute, a court may require electronic monitoring of a defendant only if the county is served by a CSCD that has a program approved by TDCJ-CJAD.

The bill would authorize a county commissioners court to operate an electronic monitoring program or to contract with a private vendor to operate a program. The requirements of operation and oversight of the program would be established by provisions of the bill.

The bill would require certain defendants that are unable to pay a fine and court costs, and are mentally and physically capable, or are confined in jail after a felony conviction, to perform certain types of manual labor in a workhouse or a county farm established by a commissioners court under the supervision of a sheriff. A defendant that performs manual labor would have one day deducted from each sentence being served.

The bill would allow a defendant not involved in an offense involving violence that is awaiting transfer to TDCJ to volunteer for a work program operated by a sheriff. A defendant that performs manual labor would have one day deducted from each sentence imposed in relation to the offense.

A commissioners court would be authorized to use money that a defendant is ordered to pay a county for costs of electronic monitoring to pay for the services of a private vendor to operate an electronic monitoring program. A commissioners court would be authorized to subsidize all or part of the costs of a defendant's participation in the program if the defendant is indigent.

The bill would repeal Section 6, Article 42.032, Code of Criminal Procedure, relating to good conduct.

Local Government Impact

A magistrate would experience administrative costs associated with implementing provisions of the bill related to interactions with the alleged victim of the offense. Those costs are not expected to be significant. However, a local government would incur the costs of a global positioning monitoring system if a defendant required to use a system is determined to be indigent. The costs would vary by municipality or county depending on the number of offenders to which the condition would be imposed and are found to be indigent.

According to the Texas County and District Clerks Association, the costs could be significant to set up, monitor, and maintain a global positioning monitoring system. Cost information on these systems was also provided by individual counties and by the Texas Department of Criminal Justice (TDCJ). For example, the Montgomery County auditor's office estimates, based on their research, that equipment rental and monitoring fees for each participant would be \$350 per month. The county has approximately 200 cases to which the requirements of the bill could apply. If all 200 were to be monitored for one month, the county would incur a cost of \$70,000. According to TDCJ, the cost for an "active" global positioning monitoring system in use by the agency's Parole Division is \$9.95 per person per day, and the cost of a "passive" system is \$4.41 per person per day. The monthly cost per person, therefore, is approximately \$298 for the active system and \$132 for the passive. [Note: Active systems are those for which data is transmitted in real time; Passive systems are those for which the positioning data is downloaded at the end of the day for review.]

It is assumed that a county commissioners court would establish and operate or contract with a vendor to operate an electronic monitoring program instead of incarcerating a defendant in a county jail if sufficient resources or collections from defendants are available to meet the costs and if there is not a CSCD that has an electronic monitoring program in the county. No significant fiscal implication to units of local government is anticipated from these provisions of the bill.

Source Agencies:

LBB Staff: JOB, DB, ESi