

OFFICE OF THE DEFENDER GENERAL

TESTIMONY RE: ELECTRONIC MONITORING MANUAL

By Matthew Valerio, Defender General

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PRIMARY CONCERN IS HOLDING INCREASED MONITORING OF PEOPLE WHO WOULD OTHERWISE BE RELEASED:

1. Biggest strength is not in the protocol, but the judgment of whoever is implementing it.
 - a. Given the fact that this program seems dependent on a point person for law enforcement who buys into the program, this could prove problematic in practice for other counties where such a point person does not exist and perhaps will never adequately exist.
 - b. Our attorneys believe that this program should be available, potentially, for all crimes. This could be quite useful in domestic assault cases where the state seeks to hold without bails – particularly for otherwise productive individuals with jobs and children who depend upon the financial support of the defendant.
2. Concern from the field is that the judges would look to put people in the program that they would have released anyway.

GENERAL CONCERNS ABOUT HOW TO ACCESS THE PROGRAM:

1. The biggest concern identified is how someone might access the program. We are very concerned that there needs to be a formal process in court for accessing the program. The materials that I received are not clear on this.
2. It should be made clear that this option should be applicable at arraignment.
3. The State should not be able to have a “standing objection” to having it imposed at arraignment. Currently, due to some incidents with a couple of individuals on the program in Windham, the State’s Attorney currently has a standing objection to imposing this at arraignment.
4. We see electronic monitoring as a less restrictive alternative to bail. Under 13 V.S.A. 7554, the **court must** impose least restrictive conditions.

5. Our concern that this will be used, rather than in lieu of bail, in *addition* to bail, similar to the responsible adult condition now. It should be made clear in the manual that electronic monitoring is in lieu of bail.

CLARITY ISSUES REGARDING THE VIOLATION OF THE ELECTRONIC MONITORING STATUS:

1. Regarding EMP-005 we are concerned that there is not clarity as to whether a violation of the program results in a return to jail or new VCR charges.
2. Currently, bail can't be revoked for mere violation of a condition of release, rather there must be some nexus between the VCRs and some constitutionally legitimate reason, such as the administration of justice (13 VSA 7575), and it would seem unconstitutional to allow revocation/return to jail after this release based simply on a VCR.
3. It should be clearly stated in the manual that a person on electronic monitoring will receive credit for time served on that status. DOC sentencing people need these things to be very, very clear. This is akin to "home detention" in that it restricts liberty while not in a correctional facility.

LOCAL BUY IN TO THE PROGRAM:

1. There is universal concern in the ODG that the success of this program hinges not on the manual but on local buy-in in each county; and whether law enforcement and the State's Attorney see this for what it is – a program to keep people on the street, not a program designed to lock people up who would otherwise be out on bail or conditions (similar to the RICC program in Chittenden).

CONSTITUTIONAL ISSUES:

1. The electronic monitoring program and implementation manual do not change the change the bail laws, which are constitutionally based, nor does it change the constitution. The ODG opinion regarding the adequacy of the manual is irrelevant to whether in any particular county, or in any individual case, the local state's attorney, law enforcement or judge is constitutionally applying the manual and the law. There are any number of ways that this manual could be unconstitutionally applied in any given case given Vermont's constitution and bail laws.
2. We have been working hard in the last year at identifying bail issues in the trial courts, and have been diligently filing bail appeals, and appeals of conditions of release to require judges and prosecutors to follow the law. Bail has become a very cultural thing in most counties. There is not a lot of thought about the findings and conclusions that must be made, rather bail is imposed for certain charges based upon a "going rate" analysis in a particular county. In fact, even for violent crimes, the presumption is, first, of innocence; and, second, of release on recognizance with conditions imposed to

ensure attendance at trial. Except in rare circumstances, the presumption is for release on recognizance, with conditions imposed to ensure that a defendant return to court.