

# MEMO: September 28, 2016

TO: Joint Legislative Oversight Committee

FROM: Brian J. Grearson, Chief Superior Judge

SUBJECT: Electronic monitoring – Act 125; comments re Policy/Procedures Draft September 16, 2016

Due to a scheduling conflict that precludes my presence at the September 28 hearing, I want to thank the Committee for the opportunity to submit the comments that follow. In reviewing any of the proposed procedures the committee should keep in mind that one of the significant changes contemplated by the new legislation is the fact that electronic monitoring is now an option as a condition of release for individuals not in DOC custody. This change is particularly important when considering how violations will be addressed and other avenues for enforcement of the electronic monitoring program.

- **Program Participation Information** – the first paragraph references the consequences of termination but does not include the filing of a Violation of Conditions of Release either by oversight or intentionally;
- **Preliminary Requirements** – as noted in the initial memo of July 28, 2016, the participant must pass an assessment but the type of assessment is yet to be identified; we would recommend a standardized assessment tool that could be utilized throughout the state; the policy calls for the participant to have a “suitable residence” without further definition (should this program apply the same criteria that DOC follows under the statutory home detention program?);
- **EMP 001** – Procedure 1.c. - limits the offenses that would be appropriate for electronic monitoring but that restriction is not found in the statute and we are unsure of the rationale behind the restriction; Procedure 5. – refers to a violation possibly being filed with the Court. There should be further definition of what actions will be addressed within the program (and not filed in court) and which will constitute violation of conditions of release to be filed with the court;
- **EMP 002** – Procedure 3.c. – removal of unauthorized items per court sanctions could only be accomplished if made the subject of a condition of release (no firearms, dangerous weapons, alcohol, non-prescribed drugs, etc.);
- **EMP 003** – references to Vermont District Court should be revised to read Criminal Division of the Superior Court;
- **EMP 004** – Restrictions – confined 24/7 to his/her domicile “with as ordered through court sanctions” presumably refers to conditions of release but clarification is necessary;
- **EMP 005** –
- **EMP 006** – presents the issue of whether time on Electronic Monitoring should be considered credit to be applied to any subsequent incarcerated sentence? (Not addressed in statute);
- **EMP 007** – who will fill this role? County by county or regional?
- **EMP 008** – will violations found in section 10 result in the filing of a violation of condition of release and if so, who decides, the EMP or appropriate State’s Attorney;

- **EMP 009** – Alert/Violation Response – 2. “obtain custody of the participant for return to DOC facility”. As noted in prefatory comments, how violations will be addressed when the individual was not originally in custody needs to be determined. (One solution may be when someone is released on a condition of release to an electronic monitoring program, that they may be arrested without a warrant for a violation of the program requirements;
- **EMP 010** – no comment

I will make myself available at a future hearing at the committee’s request to respond to any questions committee members may have regarding the existing program, the proposed expansion and or the above comments. Thank you.