



To: Joint Legislative Justice Oversight Committee

From: Cara Cookson, J.D., Public Policy Director and Victim Assistance Program Coordinator

Re: Response to draft procedures for Windham County Sheriff's Office Electronic Monitoring Program, revised 9/21/16

Date: September 26, 2016

Pre-trial GPS electronic monitoring offers an opportunity to reduce pre-trial violations and decrease recidivism while potentially improving victim and public safety. The Center has supported this effort while keeping an eye toward how risk-reduction can be maintained as the program expands to other counties and serves an increasing number of defendants and victims. The Center received a draft of the WCSO Electronic Monitoring procedures last week, and Sheriff Clark has incorporated many of the Center's comments into a subsequent revision. This memo reflects some remaining items. The Center's review is focused on the following issues: transparency; victim and public safety; enforceability of program violations; and compliance with existing victim notification rights under 13 V.S.A. § 5305. Across the board, improving transparency and defendant accountability will help build community support for the program and will improve outcomes for defendants and victims alike.

EMP-001 (Who can participate/Enrollment)

- Risk assessment: The Crime Research Group's July 2016 report recommends the use of evidence-based risk assessment for determining program eligibility, as opposed to determinations based on the charged offense. WCSO's agreement to supervise should be based upon review of an ORAS screen, or in the case of domestic violence-related offenses, the DVSI-R, which is a nationally-recognized evidence-based screening tool specific to domestic violence recidivism.
- The Legislature did not limit the court's authority to refer non-violent crimes to electronic monitoring as part of the S.212 revision. The charging offense itself is not a placeholder for risk of flight or risk to victim/public safety and should not prevent access to the program. For example, a defendant with 10 petit larceny charges who poses a substantial risk of flight and cannot make bail should be considered for this program, whereas a defendant with a long history of domestic violence offenses against the current victim with risk behaviors such as strangulation or weapon-involvement potentially should not be considered.

EMP-002 (Eligibility criteria)

- What are the risk-based eligibility criteria for defendants who chose to reside in a location without cell service? How does the program ensure 24/7 compliance if no cell/GPS service is available? If real-time data for the defendant will not be available due to the housing location, the State and the court should know in advance of the hearing.

EMP-004 (Individual participant guidelines – schedule, geographic boundaries, and exceptions)

- What standard is applied for determining whether schedule exceptions will be granted? Per the Crime Research Group's July 2016 report, exceptions should be limited to work, school, treatment, or medical issues. Exceptions for leisure activities should not be granted where defendants may ultimately receive credit for time served. Furthermore, granting an activity such as attending a parade, fair, or community event should not come at the expense of a victim not being able to enjoy that event. If the program is intended for defendants who would otherwise be incarcerated, the program requirements should restrict community access.

EMP-007 (Stakeholder issues)

- The procedure does not make any reference to escape notifications for victims among the list of minimum notifications, which should be made immediately and made directly to the victim. Especially in high risk cases, victim safety depends upon expeditious notification.
- The procedure should make some reference to how/where victims should report violations of program guidelines or conditions of release and should address how the victim report will be investigated and how the victim will be notified of the outcome. For example, will the Coordinator receive these reports or should the victim notify local law enforcement? Will the victim be provided with an affidavit form?

EMP-008 (Staff responsibilities)

- The procedure makes no reference to victim notification regarding alert/violations, which should coincide with the reference in EMP-009.

EMP-009 (Staff responsibilities)

- The alert/violation procedure appears to allow for substantial time gaps without notifying the victim that the defendant is not in compliance, which poses a substantial safety concern in high risk cases. In some cases, a period of three hours "whereabouts unknown" without a law enforcement response in a high risk case involving a crime of violence may be too long to prevent harm to a victim.

EMP-010 (Data)

- The WSCO database should make reference to whether the case involves a victim or affected person along with their names in order to ensure that notification provisions are met.
- Victim contact information and other sensitive information (address, phone number, place of employment, etc.) should be maintained separately from the main database and must be kept confidential, with reference to the confidentiality provisions under 13 V.S.A. § 5310.
- The state already has a victim notification database, VANS, which would be an obvious place for victims to provide their contact information and make periodic updates. The VANS system is centralized and designed to protect sensitive victim data, which will be essential as the program grows. DOC could potentially provide access to the database for essential WSCO staff.
- In the course of interacting with defendants, staff should not disclose any information about the victim, regardless of whether the information is maintained as part of a formal record. Even casual references made to a victim's location, schedule, or whereabouts could pose a substantial risk of harm.