

## MEMO: April 18, 2016

TO: Rep. Alice Emmons, Chair, House Committee on Corrections and Institutions

FROM: Brian J. Grearson, Chief Superior Judge

SUBJECT: H. 212 – Electronic Monitoring (Windham Pilot)

The following is a report from the trial judge who has been presiding in Windham Criminal Division since September 2015 and has had the most experience with the pilot.

Judge Hayes reports she uses Sheriff Clark's program in cases where monetary bail is set or a defendant is held without bail but she indicates preapproval of Sheriff Clark's program if the defendant is accepted. Then a subsequent hearing is held if the Sheriff indicates a willingness to accept the defendant into the program. At that hearing the State has an opportunity to object or ask for specific conditions of release (in addition to those set by the court) as part of the Sheriff's program. In addition the sheriff's program also sets the conditions they believe are necessary to monitor the individual's activities (work, training, counseling, schooling, etc.). When a defendant commits a violation of a condition, they can be returned to jail and the court is not directly involved. She does not recall seeing any charges against defendants for violating conditions of release who were on the Sheriff's program to date. Judge Hayes reports one recent failure, where a defendant has been charged with serious violent felonies committed while in his home on the sheriff's program, but most have worked.

Judge Hayes likes the program and wishes she could offer it in lieu of the daily reporting and also sensor, or 24/hour curfew type orders that are often used absent monitoring and believes it is much more effective than those arrangements. (She would still use the daily report for some defendants, who don't need more intensive monitoring, but she also believes there are many who would see fewer VCRs for if we could put them on electronic monitoring for location and alcohol right up front).

The following are the standard CORs being used with the Sheriff's program. These are issued as amended conditions as soon as the defendant is admitted to the program.

1. At such time as defendant is approved for participation in the Windham County Sheriff's Department electronic monitoring program, bail shall be suspended for such time as Defendant is compliant with all program requirements as determined in the sole discretion of the Sheriff.

And:

2. As a participant in the electronic monitoring program of Windham County you are required to abide by the rules and conditions of the electronic monitoring program, to include but not limited to: adhering to inclusion zones, exclusion zones, schedules, time

restrictions, home visits (announced and unannounced) care and charging of the electronic device. Failure to comply with any of these conditions may result in a violation being filed with the court and removal from the Electronic Monitoring Program.

Judge Hayes understands that the Sheriff has his own agreement that all participants sign before they are accepted, that has details of exactly what's required of all participants, and that his program manager goes over with the participant and his/her family members.

In conclusion Judge Hayes further reports that the court has final say over whether electronic monitoring will be used in a given case; the court can impose conditions of release it believes are relevant to the circumstances in addition to those recommended by the sheriff or State's Attorney; electronic monitoring has only been used in situations where the defendant has initially been incarcerated for failure to make bail although the judge would like to have the option of using monitoring as an optional condition of release for certain cases; and in her experience if a violation occurs, the person goes directly to jail without a VCR (violation of a condition of release) being filed which would suggest the individual remains in the custody of DOC.

In contrast to the latter statement, Commissioner Menard reports that she does not believe the defendants remain in DOC custody and are incarcerated for a violation of monitoring conditions based on court order. This issue should be clarified with the sheriff.

Please let me know if there is any further assistance I can provide the committee.