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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/11

SPONSOR Begaye LAST UPDATED \_\_\_\_\_ HB 439

SHORT TITLE Sex Offender Electronic Monitoring Changes SB \_\_\_\_\_

ANALYST Segura

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimal	Minimal			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Parole Board (PB)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

Public Defender department (PDD)

### SUMMARY

House Bill 439 proposes to modify electronic monitoring requirements for sex offenders to provide for areas where electronic monitoring is not available and to allow passive electronic monitoring and to allow the Parole Board to determine, after a hearing, whether electronic monitoring should continue or be suspended as a parole requirement. Reconciling multiple amendments to the same section of law in Laws of 2007.

### FISCAL IMPLICATIONS

House Bill 439 does not contain an appropriation. Applying the mandates within the legislation may have a minimal fiscal and administrative impact to the Parole Board.

## SIGNIFICANT ISSUES

According to the Parole Board, legislation was enacted to provide ongoing supervision and close monitoring of sex offenders to minimize their potential dangers in the community by extending their terms of parole and by increasing the level of supervision through electronic means. House Bill 439 would modify the law to add an additional crime of those who would serve extended parole periods. It would eliminate the requirement of electronic monitoring for anyone who lives in an area where GPS monitoring technology is unavailable. It would permit the board to suspend the electronic monitoring requirement after suitable evidence at a hearing.

The Parole Board does have serious concerns about some areas of the proposed bill:

1. The issue of cost; this technology is extremely expensive, and not necessarily cost-effective at a time when monetary resources are scarce. Furthermore, its efficacy has not been demonstrated in certain types of cases. Numbers of sex offenders on parole are increasing dramatically and the required use of this technology is expensive to maintain.
2. The issue of availability: GPS technology is not available in certain rural areas; if an inmate is unable to parole their extended incarceration creates additional cost to the Corrections Department.

House Bill 439 may create a loophole that could be exploited with serious negative results. In paragraph E, the language that “electronic monitoring shall not be required if the technology is not available in the area where the sex offender is to be released”, might be modified for better effect. The Parole Board states, that one of the biggest dangers we see in sex offender parole is the intention of certain sex offenders toward isolation in furtherance of their pursuit of deviant behavior.

## OTHER SUBSTANTIVE ISSUES

The Attorney General Office raises significant legal issues:

1. What entity determines whether or not the technology is available for an area where the sex offender is to be monitored? What entity has knowledge and access to the latest technology?
2. What type of evidence and/or testimony is required to be presented at a parole hearing to allow the parole board to suspend electronic monitoring as a parole requirement? How often must the parole board consider any requests for review for electronic monitoring? Suspension of electronic monitoring is an extreme remedy; what happens if the sex offender commits a crime during the time between the suspension of the electronic device and the authorized time for parole?

## ALTERNATIVES

The Parole Board suggests the following alternative language concerning paragraph E in House Bill 439:

“The electronic monitoring may use real time global positioning system monitoring technology if available or any ~~successor~~ technology that would provide ~~continuous~~ reliable

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information on the sex offender's whereabouts and enable law enforcement and the corrections department to determine the ~~real-time~~ position and movements of a sex offender to a high level of accuracy.

The Parole Board states "this would allow for passive monitoring when appropriate to the situation, alleviating the current problems which still providing for public safety concerns.

RS/bym