



AN ACT REVISING LAWS REGARDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE; CREATING A REBUTTABLE PRESUMPTION THAT ELECTRONIC MONITORING BE IMPOSED AS A CONDITION OF PRETRIAL RELEASE WHEN AN OFFENSE INVOLVES FELONY PARTNER OR FAMILY MEMBER ASSAULT, STRANGULATION OF A PARTNER OR FAMILY MEMBER, FELONY STALKING, OR FELONY VIOLATION OF AN ORDER OF PROTECTION; AMENDING SECTION 46-9-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-9-108, MCA, is amended to read:

**"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

- (a) the defendant may not commit an offense during the period of release;
- (b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
- (c) the defendant shall maintain employment or, if unemployed, actively seek employment;
- (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
- (e) the defendant shall avoid all contact with:
  - (i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-

209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription; The court may require an alcohol monitoring device that can detect the usage of alcohol by an individual and includes but is not limited to:

(i) a transdermal alcohol monitoring unit; or

(ii) a facial recognition breathalyzer unit.

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) (a) If electronic monitoring is available, there is a rebuttable presumption that the court shall impose electronic monitoring as a condition of release when the offense is:

(i) any felony assault on a partner or family member, as partner or family member is defined in 45-5-206;

(ii) strangulation of a partner or family member as defined in 45-5-215;

(iii) felony stalking as defined in 45-5-220; or

(iv) a felony violation of an order of protection as defined in 45-5-626.

(b) If electronic monitoring or alcohol monitoring under subsection (1)(i) is imposed, the court shall specify the terms under which the monitoring must be performed. The court may require as a condition of release that the defendant pay for the costs of the electronic monitoring or alcohol monitoring. If the defendant has not paid for electronic monitoring or alcohol monitoring as a condition of release, on conviction, the court shall require as a condition of the sentence that the defendant reimburse the providing agency for the costs of

electronic monitoring or alcohol monitoring, unless the court determines that the defendant is not or will not be able to pay the costs.

(c) For the purposes of this subsection (2), "electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location, including but not limited to:

(i) radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(ii) active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location, and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

~~(2)~~(3) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

~~(3)~~(4) Whenever a person accused of a violation of 45-5-206, 45-5-215, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

**Section 2. Effective date.** [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,  
HB 449, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

HOUSE BILL NO. 449

INTRODUCED BY F. GARNER, M. BLASDEL, D. FERN, J. FULLER, B. MERCER

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