

1 HOUSE BILL NO. 790

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8 SMALL

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10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE ELECTRONIC
11 MONITORING OF DEFENDANTS; REQUIRING THAT NOTICE BE PROVIDED TO VICTIMS OF THE
12 AVAILABILITY OF VICTIM NOTIFICATION TECHNOLOGY; REQUIRING NOTIFICATION TO A COUNTY
13 ATTORNEY OR OTHER PROSECUTING ATTORNEY WITHIN 1 BUSINESS DAY OF A DEFENDANT'S
14 VIOLATION OF ANY GEOGRAPHIC RESTRICTIONS; AND AMENDING SECTION 46-9-108, MCA."
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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

19 **"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The
20 court may impose any condition that will reasonably ensure the appearance of the defendant as required or that
21 will ensure the safety of any person or the community, including but not limited to the following conditions:
22 (a) the defendant may not commit an offense during the period of release;
23 (b) the defendant shall remain in the custody of a designated person who agrees to supervise the
24 defendant and report any violation of a release condition to the court, if the designated person is reasonably
25 able to assure the court that the defendant will appear as required and will not pose a danger to the safety of
26 any person or the community;
27 (c) if applicable, the defendant shall maintain employment or, if unemployed, actively seek
28 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) if applicable, the defendant shall comply with a specified curfew;
- (h) if applicable, the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- (i) if applicable, the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription. ~~The~~ If applicable, 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) a second or subsequent partner or family member assault as defined in 45-5-206;
- ~~(ii)~~ any felony assault on a partner or family member, as partner or family member is defined in 45-5-206;
- ~~(iii)~~ strangulation of a partner or family member as defined in 45-5-215;

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

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

3 (b) If electronic monitoring or alcohol monitoring under subsection (1)(i) is imposed, the court shall
4 specify the terms under which the monitoring must be performed. The court may require as a condition of
5 release that the defendant pay for the costs of the electronic monitoring or alcohol monitoring. If the defendant
6 has not paid for electronic monitoring or alcohol monitoring as a condition of release, on conviction, the court
7 shall require as a condition of the sentence that the defendant reimburse the providing agency for the costs of
8 electronic monitoring or alcohol monitoring, unless the court determines that the defendant is not or will not be
9 able to pay the costs.

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

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

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

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

26 (4) Whenever a person accused of a violation of 45-5-206, 45-5-215, 45-5-220, or 45-5-626 is
27 admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if
28 necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the

1 alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's
2 release.

3 (5) If a court orders electronic monitoring of the defendant under subsection (2)(a) and victim
4 notification technology capable of notifying a victim or protected party, either directly or through a monitoring
5 agency, is available, the county attorney or other prosecuting attorney shall provide reasonable notice to the
6 victim or protected party that victim notification technology is available and how the victim or protected party
7 may register to receive notifications directly from the electronic monitoring service provider or monitoring
8 agency if the monitored individual enters within the restricted distance of the victim or protected party or within
9 the restricted distance of a designated location.

10 (6) If a court orders electronic monitoring of the defendant under subsection (2)(a) and places
11 geographic restrictions on the defendant, the electronic monitoring service provider or monitoring agency shall
12 make a reasonable attempt to provide notice of any violation of the geographic restrictions to the county
13 attorney or other prosecuting attorney within 1 business day of the violation."

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