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AB-2658 Juveniles: electronic monitoring. (2021-2022)

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Assembly Bill No. 2658

CHAPTER 796

An act to add Section 13012.4 to the Penal Code, and to add Section 628.2 to the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2658, Bauer-Kahan. Juveniles: electronic monitoring.

Existing law subjects a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance to, and a minor under 12 years of age who is alleged to have committed specified serious offenses to, the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. Existing law authorizes a probation officer to release a minor who has been taken into temporary custody because they have been alleged to have committed an offense back to the custody of their parent, legal guardian, or responsible relative on home supervision under the supervision of the probation officer, except as specified.

Existing law authorizes the use of electronic monitoring in criminal court under a home detention program for inmates held in a county jail or other correctional facility or granted probation, or inmates participating in a work furlough program, under certain conditions, in lieu of confinement. Existing law also requires that for all felony and misdemeanor sentences, when the defendant has been in custody, that all days of custody of the defendant, including days served in home detention under electronic monitoring, are to be credited upon the defendant's term of imprisonment, or credited to any base fine, as specified.

This bill would entitle a minor to have one day credited against the minor's maximum term of confinement for each day, or fraction thereof, that the minor serves on electronic monitoring. This bill would, if electronic monitoring is imposed for a period of greater than 30 days, require the court to hold a hearing every 30 days to ensure that the minor does not remain on electronic monitoring for an unreasonable length of time, as specified. The bill would prohibit electronic monitoring devices from being used to converse with a minor or to eavesdrop or record any conversation.

Existing law requires the Department of Justice to collect certain criminal justice data from specified persons and agencies, and to make available to the public information relating to criminal statistics through the department's OpenJustice Web portal, to be updated at least once per year. Existing law requires those criminal statistics on the portal to include the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

This bill would also require the Department of Justice, in complying with those reporting requirements, to include data regarding the use of electronic monitoring in juvenile court, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) In California, persons in the juvenile justice system frequently are imprisoned in their homes and tracked by electronic monitors 24 hours a day, 7 days a week. Youth may remain on electronic monitors for months at a time, often for minor crimes. Despite the restrictions on their liberty and privacy, youth, unlike adults, do not receive custody credit for time spent on electronic monitoring. Currently, there is no statutory limit to how long youth can be subjected to this form of custody.

(b) Being on an electronic monitor is highly restrictive. Electronic monitoring programs often are not tailored to take into account modern knowledge about healthy adolescent development. Youth on electronic monitoring cannot leave their homes without advance permission. Electronic monitoring contracts make it burdensome for youth to work, attend family events, run errands for family, participate in programming, play sports, or engage in any unscheduled activity, including medical and mental health appointments. This virtual solitary confinement can lead to depression, anxiety, and social isolation.

(c) The restrictions and rules that accompany electronic monitoring often set youth up to fail, especially those with disabilities or cognitive impairments. Many electronic monitoring contracts contain over 50 separate restrictions. Some require a college reading level to understand. Intensive surveillance, which often leads to reincarceration for technical violations, undermines the rehabilitative goals of juvenile court. Ample research demonstrates that more restrictions and surveillance for persons under court supervision lead to worse case outcomes.

(d) Even when youth are granted permission to leave their home, their electronic monitors are often visible, and most have audio functions that emanate buzzes, beeps, or verbal commands. These visual and auditory indicators undermine the otherwise confidential nature of juvenile court by identifying the wearer as system-involved. The public nature of electronic monitoring causes feelings of shame, stigmatization, and anxiety, and may discourage young people on monitors from engaging in school, employment, counseling, and other prosocial activities. While electronic monitoring may be appropriate in limited circumstances, legislation must take into account the harms of monitoring, as well as less restrictive options for support and supervision of persons in the juvenile justice system.

(e) It is the intent of the Legislature to recognize the potential harms of electronic monitoring for youth, and to subject the use of electronic monitoring to limitations and regular judicial review. It is further the intent of the Legislature to provide a mechanism for the collection of data on electronic monitoring in the juvenile justice system.

SEC. 2. Section 13012.4 is added to the Penal Code, to read:

13012.4. (a) The annual report published by the department under Section 13010 shall, in regard to the contents required by paragraph (3) of subdivision (a) of Section 13012, include the annual number of minors placed on electronic monitoring, as defined in Section 628.2 of the Welfare and Institutions Code, including all of the following information for each minor:

(1) The total number of days in a calendar year that the minor was subject to electronic monitoring.

(2) The total number of days in a calendar year that the minor was detained in juvenile hall for a violation of a term of the minor's electronic monitoring contract not amounting to a new violation of law.

(3) For which of the following reasons was the minor placed or reinstated on electronic monitoring:

(A) A new violation of law.

(B) A violation of a court order not amounting to a new violation of law.

(C) A violation of a term of the minor's electronic monitoring contract not covered by subparagraph (A) or (B).

(4) For which of the following reasons was a minor on electronic monitoring detained in juvenile hall:

(A) A new violation of law.

(B) A violation of a court order not amounting to a new violation of law.

(C) A violation of a term of the minor's electronic monitoring contract not covered by subparagraph (A) or (B).

(5) All of the information described in paragraphs (1) to (4), inclusive, shall be cross-referenced with information about the age, gender, ethnicity, and offense of the minors subject to these court actions.

(b) The department's annual report published under Section 13010 shall include the information described in paragraph (3) of subdivision (a) of Section 13012, as further delineated by this section, beginning with the report due on July 1, 2026, for the

preceding calendar year.

SEC. 3. Section 628.2 is added to the Welfare and Institutions Code, to read:

628.2. (a) As used in this section, the following definitions shall apply:

(1) "Minor" means a person under the jurisdiction of the juvenile court pursuant to Section 602.

(2) "Electronic monitoring" means technology used to identify, track, record, or otherwise monitor a minor's location or movement through electronic means.

(b) Electronic monitoring devices shall not be used to converse with a minor or to eavesdrop or record any conversation.

(c) A minor shall be entitled to have one day credited against the minor's maximum term of confinement for each day, or fraction thereof, that the minor serves on electronic monitoring. The provision of custody credits pursuant to this subdivision shall apply to custody credits earned beginning January 1, 2023.

(d) If electronic monitoring is imposed for a period greater than 30 days, the court shall hold a hearing every 30 days to ensure that the minor does not remain on electronic monitoring for an unreasonable length of time. In determining whether a length of time is unreasonable, the court shall consider whether there are less restrictive conditions of release that would achieve the rehabilitative purpose of the juvenile court. If less restrictive conditions of release are warranted, the court shall order removal of the electronic monitor or modify the terms of the electronic monitoring order to achieve the less restrictive alternative.

(e) The Department of Justice shall collect data regarding the use of electronic monitoring, as specified in Section 13012.4 of the Penal Code.