



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1602

Introduced 2/20/2015, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

New Act

Creates the Electronic Monitoring Act. Requires all residential facilities that are licensed, certified, or regulated by the State to have a written policy regarding the use of electronic monitoring devices. Provides that electronic monitoring of a resident's room is permitted if certain conditions are met, including: the resident having reason to believe that his or health, safety, or personal property is at risk; the resident having notified the facility and obtained the consent of certain parties; the resident, the facility, and the roommate agreeing to the terms and conditions of the electronic monitoring; and completing a written evaluation of the use of the electronic monitoring device monthly. Prohibits electronic monitoring under certain circumstances. Requires the Department of Public Health to design a standard form for providing notice to the facility. Provides that certain costs related to the electronic monitoring shall be the responsibility of the resident or the resident's family and prohibits the use of certain types of income to pay for those costs. Contains provisions concerning: notice of the electronic monitoring to the facility, the employees, other residents, and the general public; consent to the electronic monitoring; and limitations on the use of video tapes in criminal, civil, or administrative actions. Effective immediately.

LRB099 08693 RPS 28860 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Electronic Monitoring Act.

6 Section 5. Definitions. As used in this Act:

7 "Department" means the Department of Public Health.

8 "Electronic monitoring" means the placement of an
9 electronic monitoring device by a resident in his or her room
10 in accordance with this Act.

11 "Electronic monitoring device" means a fixed-position
12 video surveillance instrument installed in a resident's room
13 under the provisions of this Act that visually records activity
14 occurring in a resident's room and is equipped with a time and
15 date stamp.

16 "Facility" means any residential facility licensed,
17 certified, or regulated by the State.

18 "Resident" means a person residing in a facility.

19 "Resident's representative" means (1) a person designated
20 in writing by a resident to be his or her representative, (2)
21 the resident's guardian, or (3) the parent of a minor resident
22 for whom no guardian has been appointed.

1 Section 10. Policy. Facilities operating in this State
2 shall have a written policy regarding the use of electronic
3 monitoring devices. The written policy shall be provided to a
4 resident or the resident's representative upon request. The
5 policy shall, at a minimum, include the provisions contained in
6 this Act and shall be in compliance with federal and State law.

7 Section 15. Permitted electronic monitoring. Electronic
8 monitoring of a resident's room is permitted only after the
9 following conditions are met:

10 (1) the notification form and written consent of
11 all necessary parties has been received by the
12 facility;

13 (2) the resident and the facility have agreed upon
14 a specific duration for the electronic monitoring and
15 that agreement is documented in writing;

16 (3) the resident has reason to believe that his or
17 her health, safety, or personal property is at risk;

18 (4) the resident has notified the facility, in
19 writing, on a form provided by the Department;

20 (5) the resident's roommate, if any, has given
21 written consent and that written consent remains in
22 force;

23 (6) the resident, the resident's roommate (if
24 any), and the facility have agreed in writing on the
25 terms and conditions of the electronic monitoring,

1 which must be signed and dated; and
2 (7) a written evaluation of the use of the
3 electronic monitoring device is completed monthly.

4 Section 20. Prohibited electronic monitoring.

5 (a) Electronic monitoring is prohibited under the
6 following circumstances:

7 (1) if the electronic monitoring is conducted without
8 the knowledge and consent of the facility and the
9 resident's roommate, if any;

10 (2) if the electronic monitoring device is concealed,
11 takes still photographs, is sound activated, or swivels;

12 (3) if the electronic monitoring device makes a visual
13 recording without a time and date stamp; or

14 (4) if the electronic monitoring device records audio
15 with or without a visual recording.

16 (b) Resident-owned electronic monitoring devices may not
17 be used outside the confines of the resident's sleeping room.

18 Section 25. Consent.

19 (a) The resident must consent to the electronic monitoring,
20 subject to the following conditions:

21 (1) only the resident may give consent if the resident
22 has capacity and has not been judicially declared to not
23 have capacity;

24 (2) if a resident has been judicially declared to lack

1 capacity and a guardian has been appointed, the guardian
2 may give consent unless the resident affirmatively objects
3 to the use of electronic monitoring;

4 (3) if the resident loses the capacity to give consent,
5 as determined by the resident's physician, it is presumed
6 that the resident has withdrawn consent; and

7 (4) consent may be withdrawn at any time, and the
8 withdrawal of consent shall be documented in the resident's
9 file.

10 (b) The resident's roommate must consent to the electronic
11 monitoring, subject to the following conditions:

12 (1) the same consent provisions required of the
13 resident shall apply to the roommate;

14 (2) the roommate may withdraw consent or object at any
15 time;

16 (3) the roommate must give written consent on a form
17 prescribed by the Department, which may place limitations
18 and conditions on the consent; and

19 (4) if the roommate refuses to consent to the
20 electronic monitoring, the facility, to the extent
21 practicable, may offer to move either resident to
22 accommodate the request for electronic monitoring;
23 however, the facility is not obligated to provide a private
24 room or to move a roommate, over the roommate's objections,
25 to accommodate a request for electronic monitoring.

1 Section 30. Notice.

2 (a) A resident seeking to have an electronic monitoring
3 device installed in the resident's sleeping room shall be
4 responsible for giving notice to the facility, the employees,
5 other residents, and the general public.

6 (b) The resident shall notify the facility in writing of
7 his or her desire to have an electronic monitoring device
8 installed. Notice shall be given on a standard form designed by
9 the Department that shall at a minimum require that the
10 following information be provided:

11 (1) the resident's signed consent to electronic
12 monitoring;

13 (2) the resident's perceived threat of risk to health,
14 safety, or personal property;

15 (3) the period of time that the resident is requesting
16 the electronic monitoring to occur;

17 (4) the type of electronic monitoring device, the date
18 and location of installation, and how the electronic
19 monitoring device functions;

20 (5) the plan for retrieval of the tape, replacement of
21 the tape, and maintenance of the equipment;

22 (6) whether the electronic monitoring device is to be
23 unobstructed at all times or obstructed at certain times
24 for the resident's privacy;

25 (7) the plan for the removal of the electronic
26 monitoring device if the resident or the resident's

1 roommate withdraws consent or the electronic monitoring
2 device is unused or unmaintained for a period of at least
3 90 days;

4 (8) the resident's roommate's signed consent, if
5 applicable;

6 (9) a release of the facility from any liability
7 associated with the electronic monitoring; the release
8 must be signed by the resident and the resident's roommate,
9 if applicable; and

10 (10) a waiver of the resident's and resident's
11 roommate's rights to privacy regarding the use of the
12 electronic monitoring device; the waiver must be signed by
13 the resident and the resident's roommate, if any.

14 (c) The resident is responsible for posting and maintaining
15 a sign at the front of the facility notifying the general
16 public that electronic monitoring devices are operational in
17 the facility. The resident is responsible for posting and
18 maintaining a sign on the resident's room notifying staff and
19 visitors of the presence of an electronic monitoring device.
20 The size, material, font size and style, and the message of the
21 sign shall be established by the Department by rule.

22 Section 35. Cost associated with electronic monitoring.
23 The cost of the equipment, tapes, installation of the
24 equipment, maintenance of the equipment, and removal of the
25 equipment shall be the responsibility of the resident or the

1 resident's family. The income of a resident who is receiving
2 medical assistance under Article V of the Illinois Public Aid
3 Code may not be used.

4 Section 40. Unauthorized use of video recordings.
5 Information and images gathered may not be used in a criminal,
6 civil, or administrative action if: (1) the electronic
7 monitoring device was used without the knowledge and consent of
8 the facility, the resident, or the resident's roommate, if any,
9 in violation of this Act or facility policy; (2) each image
10 does not have a date and time stamp; or (3) the tape was
11 edited, enhanced, or taken from the original format and
12 altered. Prior to use in a criminal, civil, or administrative
13 action, any and all residents appearing on the tape must give
14 express written consent.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.