



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5585

by Rep. Kimberly du Buclet

SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.811 new
30 ILCS 105/5.812 new
750 ILCS 60/223

from Ch. 40, par. 2312-23

Amends the State Finance Act. Creates the Indigent GPS Electronic Monitoring Device Fund and the GPS Monitoring Device Administration Fee Fund in the State treasury. Amends the Illinois Domestic Violence Act of 1986. Provides that a respondent shall be required by the court to wear, during the period in which the order of protection is in effect, an electronic monitoring device approved by the court that has Global Positioning System (GPS) capability. Provides that the cost of installing and maintaining the device shall be borne by the respondent unless the court determines that the respondent is indigent. Provides that upon being ordered to wear the device, a non-indigent respondent shall additionally pay a fee determined by the court to cover the cost of installing and maintaining a GPS device. Provides that the Secretary of Human Services shall, subject to appropriation by the General Assembly, use all money in the Indigent GPS Electronic Monitoring Device Fund to reimburse electronic monitoring device providers who have installed devices on indigent persons against whom an order of protection has been issued. Provides that the Secretary shall, subject to appropriation by the General Assembly, use the money paid into the GPS Monitoring Device Administration Fee Fund to offset his or her administrative costs.

LRB097 17833 AJO 65592 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning orders of protection.

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

4 Section 5. The State Finance Act is amended by adding
5 Sections 5.811 and 5.812 as follows:

6 (30 ILCS 105/5.811 new)

7 Sec. 5.811. The Indigent GPS Electronic Monitoring Device
8 Fund.

9 (30 ILCS 105/5.812 new)

10 Sec. 5.812. The GPS Monitoring Device Administration Fee
11 Fund.

12 Section 10. The Illinois Domestic Violence Act of 1986 is
13 amended by changing Section 223 as follows:

14 (750 ILCS 60/223) (from Ch. 40, par. 2312-23)

15 Sec. 223. Enforcement of orders of protection.

16 (a) When violation is crime. A violation of any order of
17 protection, whether issued in a civil or criminal proceeding,
18 shall be enforced by a criminal court when:

19 (1) The respondent commits the crime of violation of an
20 order of protection pursuant to Section 12-3.4 or 12-30 of

1 the Criminal Code of 1961, by having knowingly violated:

2 (i) remedies described in paragraphs (1), (2),
3 (3), (14), or (14.5) of subsection (b) of Section 214
4 of this Act; or

5 (ii) a remedy, which is substantially similar to
6 the remedies authorized under paragraphs (1), (2),
7 (3), (14), and (14.5) of subsection (b) of Section 214
8 of this Act, in a valid order of protection which is
9 authorized under the laws of another state, tribe, or
10 United States territory; or

11 (iii) any other remedy when the act constitutes a
12 crime against the protected parties as defined by the
13 Criminal Code of 1961.

14 Prosecution for a violation of an order of protection
15 shall not bar concurrent prosecution for any other crime,
16 including any crime that may have been committed at the
17 time of the violation of the order of protection; or

18 (2) The respondent commits the crime of child abduction
19 pursuant to Section 10-5 of the Criminal Code of 1961, by
20 having knowingly violated:

21 (i) remedies described in paragraphs (5), (6) or
22 (8) of subsection (b) of Section 214 of this Act; or

23 (ii) a remedy, which is substantially similar to
24 the remedies authorized under paragraphs (5), (6), or
25 (8) of subsection (b) of Section 214 of this Act, in a
26 valid order of protection which is authorized under the

1 laws of another state, tribe, or United States
2 territory.

3 (b) When violation is contempt of court. A violation of any
4 valid Illinois order of protection, whether issued in a civil
5 or criminal proceeding, may be enforced through civil or
6 criminal contempt procedures, as appropriate, by any court with
7 jurisdiction, regardless where the act or acts which violated
8 the order of protection were committed, to the extent
9 consistent with the venue provisions of this Act. Nothing in
10 this Act shall preclude any Illinois court from enforcing any
11 valid order of protection issued in another state. Illinois
12 courts may enforce orders of protection through both criminal
13 prosecution and contempt proceedings, unless the action which
14 is second in time is barred by collateral estoppel or the
15 constitutional prohibition against double jeopardy.

16 (1) In a contempt proceeding where the petition for a
17 rule to show cause sets forth facts evidencing an immediate
18 danger that the respondent will flee the jurisdiction,
19 conceal a child, or inflict physical abuse on the
20 petitioner or minor children or on dependent adults in
21 petitioner's care, the court may order the attachment of
22 the respondent without prior service of the rule to show
23 cause or the petition for a rule to show cause. Bond shall
24 be set unless specifically denied in writing.

25 (2) A petition for a rule to show cause for violation
26 of an order of protection shall be treated as an expedited

1 proceeding.

2 (b-1) The court shall not hold a school district or private
3 or non-public school or any of its employees in civil or
4 criminal contempt unless the school district or private or
5 non-public school has been allowed to intervene.

6 (b-2) The court may hold the parents, guardian, or legal
7 custodian of a minor respondent in civil or criminal contempt
8 for a violation of any provision of any order entered under
9 this Act for conduct of the minor respondent in violation of
10 this Act if the parents, guardian, or legal custodian directed,
11 encouraged, or assisted the respondent minor in such conduct.

12 (c) Violation of custody or support orders. A violation of
13 remedies described in paragraphs (5), (6), (8), or (9) of
14 subsection (b) of Section 214 of this Act may be enforced by
15 any remedy provided by Section 611 of the Illinois Marriage and
16 Dissolution of Marriage Act. The court may enforce any order
17 for support issued under paragraph (12) of subsection (b) of
18 Section 214 in the manner provided for under Parts V and VII of
19 the Illinois Marriage and Dissolution of Marriage Act.

20 (d) Actual knowledge. An order of protection may be
21 enforced pursuant to this Section if the respondent violates
22 the order after the respondent has actual knowledge of its
23 contents as shown through one of the following means:

24 (1) By service, delivery, or notice under Section 210.

25 (2) By notice under Section 210.1 or 211.

26 (3) By service of an order of protection under Section

1 222.

2 (4) By other means demonstrating actual knowledge of
3 the contents of the order.

4 (e) The enforcement of an order of protection in civil or
5 criminal court shall not be affected by either of the
6 following:

7 (1) The existence of a separate, correlative order,
8 entered under Section 215.

9 (2) Any finding or order entered in a conjoined
10 criminal proceeding.

11 (f) Circumstances. The court, when determining whether or
12 not a violation of an order of protection has occurred, shall
13 not require physical manifestations of abuse on the person of
14 the victim.

15 (g) Penalties.

16 (1) Except as provided in paragraph (3) of this
17 subsection, where the court finds the commission of a crime
18 or contempt of court under subsections (a) or (b) of this
19 Section, the penalty shall be the penalty that generally
20 applies in such criminal or contempt proceedings, and may
21 include one or more of the following: incarceration,
22 payment of restitution, a fine, payment of attorneys' fees
23 and costs, or community service.

24 (2) The court shall hear and take into account evidence
25 of any factors in aggravation or mitigation before deciding
26 an appropriate penalty under paragraph (1) of this

1 subsection.

2 (3) To the extent permitted by law, the court is
3 encouraged to:

4 (i) increase the penalty for the knowing violation
5 of any order of protection over any penalty previously
6 imposed by any court for respondent's violation of any
7 order of protection or penal statute involving
8 petitioner as victim and respondent as defendant;

9 (ii) impose a minimum penalty of 24 hours
10 imprisonment for respondent's first violation of any
11 order of protection; and

12 (iii) impose a minimum penalty of 48 hours
13 imprisonment for respondent's second or subsequent
14 violation of an order of protection

15 unless the court explicitly finds that an increased penalty
16 or that period of imprisonment would be manifestly unjust.

17 (4) In addition to any other penalties imposed for a
18 violation of an order of protection, a criminal court may
19 consider evidence of any violations of an order of
20 protection:

21 (i) to increase, revoke or modify the bail bond on
22 an underlying criminal charge pursuant to Section
23 110-6 of the Code of Criminal Procedure of 1963;

24 (ii) to revoke or modify an order of probation,
25 conditional discharge or supervision, pursuant to
26 Section 5-6-4 of the Unified Code of Corrections;

1 (iii) to revoke or modify a sentence of periodic
2 imprisonment, pursuant to Section 5-7-2 of the Unified
3 Code of Corrections.

4 (5) In addition to any other penalties, the court shall
5 impose an additional fine of \$20 as authorized by Section
6 5-9-1.11 of the Unified Code of Corrections upon any person
7 convicted of or placed on supervision for a violation of an
8 order of protection. The additional fine shall be imposed
9 for each violation of this Section.

10 (h) A respondent shall be required by the court to wear,
11 during the period in which the order of protection is in
12 effect, an electronic monitoring device approved by the court
13 that has Global Positioning System (GPS) capability. The cost
14 of installing and maintaining the device shall be borne by the
15 respondent unless the court determines that the respondent is
16 indigent. Upon being ordered to wear the device, a non-indigent
17 respondent shall additionally pay a fee determined by the court
18 to cover the cost of installing and maintaining a GPS device.
19 The fees shall be deposited into the Indigent GPS Electronic
20 Monitoring Device Fund which is created as a special fund in
21 the State treasury and administered by the Secretary of Human
22 Services. The Secretary shall, subject to appropriation by the
23 General Assembly, use all money in the Indigent GPS Electronic
24 Monitoring Device Fund to reimburse electronic monitoring
25 device providers who have installed devices on indigent persons
26 against whom an order of protection has been issued under this

1 Section. The Secretary of Human Services shall make payments to
2 those providers every 3 months. If the amount of money in the
3 Fund at the time payments are made is not sufficient to pay all
4 requests for reimbursement submitted during that 3 month
5 period, the Secretary shall make payments on a pro-rata basis,
6 and those payments shall be considered payment in full for the
7 requests submitted. The GPS Monitoring Device Administration
8 Fee Fund is created as a special fund in the State treasury and
9 administered by the Secretary of Human Services. The Secretary
10 shall, subject to appropriation by the General Assembly, use
11 the money paid into this Fund to offset his or her
12 administrative costs for administering this subsection.

13 (Source: P.A. 96-1551, eff. 7-1-11; 97-294, eff. 1-1-12.)