

SENATE BILL NO. 37—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF PAROLE AND PROBATION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Authorizes GPS tracking of parolees, probationers and certain other offenders who are subject to electronic supervision. (BDR 14-354)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal offenders; revising provisions that establish the capabilities of electronic devices which may be used to supervise parolees, probationers and certain other offenders who are subject to electronic supervision; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, certain criminal offenders who have been granted probation or who are placed on parole or in residential confinement may be subject to electronic supervision. Existing law provides that: (1) the capabilities of an electronic device used to supervise such an offender must be limited to recording or transmitting information concerning the offender's presence at his or her residence; and (2) such an electronic device may not be used if it is capable of recording or transmitting oral or wire communications or any auditory sound, or any information concerning the activities of the offender while in his or her residence. (NRS 4.3762, 5.076, 176A.440, 176A.540, 176A.660, 213.124, 213.15193, 213.152, 213.380)

This bill revises provisions concerning the capabilities of an electronic device used to electronically supervise an offender to authorize the use of devices that are capable of: (1) using the Global Positioning System; (2) recording or transmitting information concerning the location of the person being monitored; and (3) producing, upon request, reports or records of the person's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location. This bill also maintains provisions of existing law that prohibit the use of an electronic device which is capable of recording or transmitting oral or wire communications or any auditory sound, or any information concerning the activities of an offender.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 176A.440 is hereby amended to read as follows:

176A.440 1. The Chief Parole and Probation Officer shall develop a program for the intensive supervision of a person granted probation pursuant to subsection 4 of NRS 176A.100.

2. The Program of Intensive Supervision must include an initial period of electronic supervision of the probationer with an electronic device approved by the Division. The device *may be capable of using the Global Positioning System, but* must be minimally intrusive and limited in capability to recording or transmitting information concerning the probationer's ~~[presence—at—the probationer's residence,]~~ *location*, including, but not limited to, the transmission of still visual images which do not concern the probationer's activities ~~[while inside the residence,]~~ *, and producing, upon request, reports or records of the probationer's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the probationer's activities , ~~[while inside the residence,]~~
↪ must not be used.

Sec. 2. NRS 176A.540 is hereby amended to read as follows:

176A.540 1. The Chief Parole and Probation Officer may order the residential confinement of a probationer if the Chief Parole and Probation Officer believes that the probationer poses no danger to the community and will appear at a scheduled inquiry or court hearing.

2. In ordering the residential confinement of a probationer, the Chief Parole and Probation Officer shall:

(a) Require the probationer to be confined to the probationer's residence during the time the probationer is away from any employment, community service or other activity authorized by the Division; and

(b) Require intensive supervision of the probationer, including, without limitation, unannounced visits to the probationer's residence or other locations where the probationer is expected to be to determine whether the probationer is complying with the terms of confinement.

3. An electronic device approved by the Division may be used to supervise a probationer who is ordered to be placed in residential confinement. The device *may be capable of using the Global*



Positioning System, but must be minimally intrusive and limited in capability to recording or transmitting information concerning the probationer's ~~presence at the probationer's residence,~~ *location, including, but not limited to,* the transmission of still visual images which do not concern the probationer's activities ~~while inside the residence,~~ *and producing, upon request, reports or records of the probationer's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.*

A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the probationer's activities, ~~while inside the residence,~~

↪ must not be used.

4. The Chief Parole and Probation Officer shall not order a probationer to be placed in residential confinement unless the probationer agrees to the order.

5. Any residential confinement must not extend beyond the unexpired maximum term of the original sentence.

Sec. 3. NRS 176A.660 is hereby amended to read as follows:

176A.660 1. If a person who has been placed on probation violates a condition of probation, the court may order the person to a term of residential confinement in lieu of causing the sentence imposed to be executed. In making this determination, the court shall consider the criminal record of the person and the seriousness of the crime committed.

2. In ordering the person to a term of residential confinement, the court shall:

(a) Direct that the person be placed under the supervision of the Division and require:

(1) The person to be confined to the person's residence during the time the person is away from any employment, community service or other activity authorized by the Division; and

(2) Intensive supervision of the person, including, without limitation, unannounced visits to the person's residence or other locations where the person is expected to be in order to determine whether the person is complying with the terms of confinement; or

(b) If the person was placed on probation for a felony conviction, direct that the person be placed under the supervision of the Department of Corrections and require the person to be confined to a facility or institution of the Department for a period not to exceed 6 months. The Department may select the facility or institution in which to place the person.

3. An electronic device approved by the Division may be used to supervise a person ordered to a term of residential confinement.



The device *may be capable of using the Global Positioning System, but* must be minimally intrusive and limited in capability to recording or transmitting information concerning the person's ~~[presence at the person's residence,]~~ *location*, including, but not limited to, the transmission of still visual images which do not concern the person's activities ~~[while inside the residence,]~~ *, and producing, upon request, reports or records of the person's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the person's activities, ~~[while inside the residence,]~~

↪ must not be used.

4. The court shall not order a person to a term of residential confinement unless the person agrees to the order.

5. A term of residential confinement may not be longer than the *unexpired* maximum term of a sentence imposed by the court.

6. As used in this section:

(a) "Facility" has the meaning ascribed to it in NRS 209.065.

(b) "Institution" has the meaning ascribed to it in NRS 209.071.

Sec. 4. NRS 4.3762 is hereby amended to read as follows:

4.3762 1. Except as otherwise provided in subsection 7, in lieu of imposing any punishment other than a minimum sentence required by statute, a justice of the peace may sentence a person convicted of a misdemeanor to a term of residential confinement. In making this determination, the justice of the peace shall consider the criminal record of the convicted person and the seriousness of the crime committed.

2. In sentencing a convicted person to a term of residential confinement, the justice of the peace shall:

(a) Require the convicted person to be confined to his or her residence during the time the convicted person is away from his or her employment, public service or other activity authorized by the justice of the peace; and

(b) Require intensive supervision of the convicted person, including, without limitation, electronic surveillance and unannounced visits to his or her residence or other locations where the convicted person is expected to be to determine whether the convicted person is complying with the terms of his or her sentence.

3. In sentencing a convicted person to a term of residential confinement, the justice of the peace may, when the circumstances warrant, require the convicted person to submit to:



(a) A search and seizure by the chief of a department of alternative sentencing, an assistant alternative sentencing officer or any other law enforcement officer at any time of the day or night without a search warrant; and

(b) Periodic tests to determine whether the offender is using a controlled substance or consuming alcohol.

4. Except as otherwise provided in subsection 5, an electronic device may be used to supervise a convicted person sentenced to a term of residential confinement. The device *may be capable of using the Global Positioning System, but* must be minimally intrusive and limited in capability to recording or transmitting information concerning the ~~[presence]~~ *location* of the person , ~~[at his or her residence,]~~ including, but not limited to, the transmission of still visual images which do not concern the activities of the person ~~[while inside his or her residence,]~~ , *and producing, upon request, reports or records of the person's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the activities of the person , ~~[while inside his or her residence,]~~
↳ must not be used.

5. An electronic device must be used in the manner set forth in subsection 4 to supervise a person who is sentenced pursuant to paragraph (b) of subsection 1 of NRS 484C.400 for a second violation within 7 years of driving under the influence of intoxicating liquor or a controlled substance.

6. A term of residential confinement, together with the term of any minimum sentence required by statute, may not exceed the maximum sentence which otherwise could have been imposed for the offense.

7. The justice of the peace shall not sentence a person convicted of committing a battery which constitutes domestic violence pursuant to NRS 33.018 to a term of residential confinement in lieu of imprisonment unless the justice of the peace makes a finding that the person is not likely to pose a threat to the victim of the battery.

8. The justice of the peace may issue a warrant for the arrest of a convicted person who violates or fails to fulfill a condition of residential confinement.

Sec. 5. NRS 5.076 is hereby amended to read as follows:

5.076 1. Except as otherwise provided in subsection 7, in lieu of imposing any punishment other than a minimum sentence required by statute, a municipal judge may sentence a person



1 convicted of a misdemeanor to a term of residential confinement. In
2 making this determination, the municipal judge shall consider the
3 criminal record of the convicted person and the seriousness of the
4 crime committed.

5 2. In sentencing a convicted person to a term of residential
6 confinement, the municipal judge shall:

7 (a) Require the convicted person to be confined to his or her
8 residence during the time the convicted person is away from his or
9 her employment, public service or other activity authorized by the
10 municipal judge; and

11 (b) Require intensive supervision of the convicted person,
12 including, without limitation, electronic surveillance and
13 unannounced visits to his or her residence or other locations where
14 the convicted person is expected to be in order to determine whether
15 the convicted person is complying with the terms of his or her
16 sentence.

17 3. In sentencing a convicted person to a term of residential
18 confinement, the municipal judge may, when the circumstances
19 warrant, require the convicted person to submit to:

20 (a) A search and seizure by the chief of a department of
21 alternative sentencing, an assistant alternative sentencing officer or
22 any other law enforcement officer at any time of the day or night
23 without a search warrant; and

24 (b) Periodic tests to determine whether the offender is using a
25 controlled substance or consuming alcohol.

26 4. Except as otherwise provided in subsection 5, an electronic
27 device may be used to supervise a convicted person sentenced to a
28 term of residential confinement. The device *may be capable of*
29 *using the Global Positioning System, but* must be minimally
30 intrusive and limited in capability to recording or transmitting
31 information concerning the ~~[presence]~~ *location* of the person, ~~[at~~
32 ~~his or her residence,]~~ including, but not limited to, the transmission
33 of still visual images which do not concern the activities of the
34 person ~~[while inside his or her residence,]~~ *, and producing, upon*
35 *request, reports or records of the person's presence near or within*
36 *a crime scene or prohibited area or his or her departure from a*
37 *specified geographic location.* A device which is capable of
38 recording or transmitting:

39 (a) Oral or wire communications or any auditory sound; or

40 (b) Information concerning the activities of the person, ~~[while~~
41 ~~inside his or her residence,]~~

42 ➔ must not be used.

43 5. An electronic device must be used in the manner set forth in
44 subsection 4 to supervise a person who is sentenced pursuant to
45 paragraph (b) of subsection 1 of NRS 484C.400 for a second



1 violation within 7 years of driving under the influence of
2 intoxicating liquor or a controlled substance.

3 6. A term of residential confinement, together with the term of
4 any minimum sentence required by statute, may not exceed the
5 maximum sentence which otherwise could have been imposed for
6 the offense.

7 7. The municipal judge shall not sentence a person convicted
8 of committing a battery which constitutes domestic violence
9 pursuant to NRS 33.018 to a term of residential confinement in lieu
10 of imprisonment unless the municipal judge makes a finding that the
11 person is not likely to pose a threat to the victim of the battery.

12 8. The municipal judge may issue a warrant for the arrest of a
13 convicted person who violates or fails to fulfill a condition of
14 residential confinement.

15 **Sec. 6.** NRS 213.124 is hereby amended to read as follows:

16 213.124 1. Upon the granting of parole to a prisoner, the
17 Board may require the parolee to submit to a program of intensive
18 supervision as a condition of his or her parole.

19 2. The Chief shall develop a program for the intensive
20 supervision of parolees required to submit to such a program
21 pursuant to subsection 1. The program must include an initial period
22 of electronic supervision of the parolee with an electronic device
23 approved by the Division. The device *may be capable of using the*
24 *Global Positioning System, but* must be minimally intrusive and
25 limited in capability to recording or transmitting information
26 concerning the parolee's ~~presence at his or her residence,~~ *location,*
27 including, but not limited to, the transmission of still visual images
28 which do not concern the parolee's activities ~~while inside his or her~~
29 ~~residence,~~ *and producing, upon request, reports or records of the*
30 *parolee's presence near or within a crime scene or prohibited area*
31 *or his or her departure from a specified geographic location.* A
32 device which is capable of recording or transmitting:

33 (a) Oral or wire communications or any auditory sound; or

34 (b) Information concerning the parolee's activities , ~~while~~
35 ~~inside his or her residence,~~

36 ↪ must not be used.

37 **Sec. 7.** NRS 213.15193 is hereby amended to read as follows:

38 213.15193 1. Except as otherwise provided in subsection 6,
39 the Chief may order the residential confinement of a parolee if the
40 Chief believes that the parolee does not pose a danger to the
41 community and will appear at a scheduled inquiry or hearing.

42 2. In ordering the residential confinement of a parolee, the
43 Chief shall:



(a) Require the parolee to be confined to his or her residence during the time the parolee is away from his or her employment, community service or other activity authorized by the Division; and

(b) Require intensive supervision of the parolee, including, without limitation, unannounced visits to his or her residence or other locations where the parolee is expected to be to determine whether the parolee is complying with the terms of his or her confinement.

3. An electronic device approved by the Division may be used to supervise a parolee who is ordered to be placed in residential confinement. The device *may be capable of using the Global Positioning System, but* must be minimally intrusive and limited in capability to recording or transmitting information concerning the ~~[presence]~~ *location* of the parolee , ~~[at his or her residence,]~~ including, without limitation, the transmission of still visual images which do not concern the activities of the parolee ~~[while inside his or her residence.],~~ *and producing, upon request, reports or records of the parolee's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the activities of the parolee , ~~[while inside his or her residence,]~~
↳ must not be used.

4. The Chief shall not order a parolee to be placed in residential confinement unless the parolee agrees to the order.

5. Any residential confinement must not extend beyond the unexpired maximum term of the original sentence of the parolee.

6. The Chief shall not order a parolee who is serving a sentence for committing a battery which constitutes domestic violence pursuant to NRS 33.018 to be placed in residential confinement unless the Chief makes a finding that the parolee is not likely to pose a threat to the victim of the battery.

Sec. 8. NRS 213.152 is hereby amended to read as follows:

213.152 1. Except as otherwise provided in subsection 7, if a parolee violates a condition of his or her parole, the Board may order the parolee to a term of residential confinement in lieu of suspending his or her parole and returning the parolee to confinement. In making this determination, the Board shall consider the criminal record of the parolee and the seriousness of the crime committed.

2. In ordering the parolee to a term of residential confinement, the Board shall:

(a) Require:



(1) The parolee to be confined to his or her residence during the time the parolee is away from his or her employment, community service or other activity authorized by the Division; and

(2) Intensive supervision of the parolee, including, without limitation, unannounced visits to his or her residence or other locations where the parolee is expected to be in order to determine whether the parolee is complying with the terms of his or her confinement; or

(b) Require the parolee to be confined to a facility or institution of the Department of Corrections for a period not to exceed 6 months. The Department may select the facility or institution in which to place the parolee.

3. An electronic device approved by the Division may be used to supervise a parolee ordered to a term of residential confinement. The device *may be capable of using the Global Positioning System, but* must be minimally intrusive and limited in capability to recording or transmitting information concerning the ~~presence~~ *location* of the parolee, ~~[at his or her residence,]~~ including, but not limited to, the transmission of still visual images which do not concern the activities of the ~~[person while inside his or her residence.]~~ *parolee, and producing, upon request, reports or records of the parolee's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the activities of the parolee, ~~[while inside his or her residence,]~~
→ must not be used.

4. A parolee who is confined to a facility or institution of the Department of Corrections pursuant to paragraph (b) of subsection 2:

(a) May earn credits to reduce his or her sentence pursuant to chapter 209 of NRS; and

(b) Shall not be deemed to be released on parole for purposes of NRS 209.447 or 209.4475 during the period of that confinement.

5. The Board shall not order a parolee to a term of residential confinement unless the parolee agrees to the order.

6. A term of residential confinement may not be longer than the unexpired maximum term of the original sentence of the parolee.

7. The Board shall not order a parolee who is serving a sentence for committing a battery which constitutes domestic violence pursuant to NRS 33.018 to a term of residential confinement unless the Board makes a finding that the parolee is not likely to pose a threat to the victim of the battery.



8. As used in this section:

(a) "Facility" has the meaning ascribed to it in NRS 209.065.

(b) "Institution" has the meaning ascribed to it in NRS 209.071.

Sec. 9. NRS 213.380 is hereby amended to read as follows:

213.380 1. The Division shall establish procedures for the residential confinement of offenders.

2. The Division may establish, and at any time modify, the terms and conditions of the residential confinement, except that the Division shall:

(a) Require the offender to participate in regular sessions of education, counseling and any other necessary or desirable treatment in the community, unless the offender is assigned to the custody of the Division pursuant to NRS 209.3925;

(b) Require the offender to be confined to his or her residence during the time the offender is not:

(1) Engaged in employment or an activity listed in paragraph (a) that is authorized by the Division;

(2) Receiving medical treatment that is authorized by the Division; or

(3) Engaged in any other activity that is authorized by the Division; and

(c) Require intensive supervision of the offender, including unannounced visits to his or her residence or other locations where the offender is expected to be in order to determine whether the offender is complying with the terms and conditions of his or her confinement.

3. An electronic device approved by the Division may be used to supervise an offender . ~~{if it is}~~ *The device may be capable of using the Global Positioning System, but must be* minimally intrusive and limited in capability to recording or transmitting information concerning the offender's ~~{presence at his or her residence.}~~ *location*, including, but not limited to, the transmission of still visual images which do not concern the offender's activities ~~{while inside his or her residence.}~~ *, and producing, upon request, reports or records of the offender's presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.* A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the offender's activities , ~~{while inside his or her residence.}~~

↪ must not be used.

Sec. 10. This act becomes effective on July 1, 2015.

