

Form #4

FILE

2011 JUL 20 PM 2: 02

OFFICE OF THE VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Division of Corrections TITLE NUMBER: 90

CITE AUTHORITY: 25-1-14

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Fees for Electronic Monitoring of Offenders

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

M. Christine F. Morris DMAPS Deputy Cab Sec
Authorized Signature

FILED

90CSR8

2011 JUL 20 PM 2: 02

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 8
FEES FOR ELECTRONIC MONITORING OF OFFENDERS

§90-8-1 General

1.1 Scope -- This legislative rule establishes the policy and delineates guidelines for the establishment and collection of supervision fees from offenders placed upon the electronic monitoring program for offenders under the jurisdiction of the Commissioner of the West Virginia Division of Corrections.

1.2 Authority -- WV Code § 25-1-14

1.3 Filing date ~~May 8, 2001~~
April , 2011

1.4 Effective date ~~May 8, 2001~~

§90-8-2 Definitions

2.1 "Offender" means any person committed to the custody or supervision of the West Virginia Division of Corrections as an inmate or as an in-state or out-of-state probationer or parolee.

2.2 "Electronic monitoring equipment" means an electronic

device or apparatus approved by the Division of Corrections which is capable of recording or transmitting information regarding the offender's presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the Division of Corrections shall not approve any monitoring device which is capable of recording or transmitting (i) visual images, except that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system, or (ii) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: *Provided, That* conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.

§90-8-3 Applicable

3.1 All offenders committed to the custody or supervision of the Commissioner of the West Virginia

Division of Corrections by a court, the Parole Board, or through the Interstate Compact Agreement, and Corrections inmates housed in regional jails, any of which pursuant to a separate policy directive of the Division of Corrections are suitable candidates for placement in the electronic monitoring program.

3.2 The Division of Corrections may utilize varying levels of monitoring technology and these technologies include but are not limited to the following:

3.2.1 Radio Frequency Bracelet communicating with a device attached to a land line.

3.2.2 Radio Frequency Bracelet communicating with a device attached to a land line with the capability to detect and transmit information regarding blood alcohol levels.

3.2.3 Radio Frequency Bracelet communicating with a device attached to a cellular or wireless communication device.

3.2.4 Radio Frequency Bracelet communicating with a device attached to a cellular or wireless communication device with the capability to detect and transmit information regarding blood alcohol levels.

3.2.5. Global Position System which uses cellular or other wireless communications network to report locations and status in real time or as close thereto as is practicable given reception.

3.2.6 Global Position System which uses cellular or other wireless communications network to

report locations and status on a delayed basis by downloads of information periodically during a fixed period.

3.3 The type of technology employed shall be based upon the nature of the offense, the offenders prison record, the offender's record while upon parole or other forms of supervised release and any other need or risk perceived to be necessary or appropriate by the offender's supervision parole officer.

§90-8-4 Procedure.

4.1 Fee Determination and Collection Process

4.1.1 A daily monitoring fee, in an amount not to exceed Six Dollars ~~(\$6.00)~~ Ten Dollars (\$10.00) per calendar day, will be paid by participating offenders either by certified check or money order on or before the end of each 7-day period while on electronic monitoring supervision. The offender will be notified of the supervision fee prior to actual participation in the electronic monitoring program. The fee will vary within this range depending upon the costs to the Division of Corrections for the monitoring device to be employed.

4.1.2 Certified checks and money orders shall be made payable to the Division of Corrections' Electronic Monitoring Account. No other forms of payment will be accepted.

4.1.3 Each 7-day payment must be mailed or delivered to the Electronic Monitoring Program Coordinator at the address provided to the offender during the program orientation process.

4.2 The Electronic Monitoring Program Coordinator may approve requests for exemption or reduction of daily monitoring fees.

4.2.1 The offender must submit a written request to the Electronic Monitoring Coordinator.

4.2.2 The offender must state whether he or she is applying for an exemption or a reduction and the amount of such exemption or reduction requested.

4.2.3 The request must outline the offender's current income or income prospects, liquid assets, fixed debts and obligations (including federal, state and local taxes), medical expenses, child care, transportation and expenses necessary for employment, age or physical infirmity of resident family members, and the consequences should the exemption or reduction be denied.

4.2.4 Should the request for exemption or reduction be denied, the offender will be notified immediately.

4.2.5 The denial decision may be appealed to the Commissioner for a final decision.

4.2.6 The offender will be advised to rectify any arrears in payments.

4.2.7 If the request for exemption or reduction is approved, the offender will be notified that the requested exemption or reduction is valid only as long as the circumstances under which it was granted remain the same. It is the offender's responsibility to notify the Coordinator should these circumstances change. In determining whether to reduce or waive the costs of electronic monitoring the Division of Corrections shall examine the income of the offender to determine whether the offender's income is at a level which would qualify him or her for appointed counsel. If so, the parole officer shall examine the income of the offender more fully to determine whether the offender is capable of making a partial payment or providing a form of community service or some combination of both to compensate for the reduced or waived fee. The fee may be waived for an offender who meets the minimum income level and is otherwise unable to pay a reduced fee or provide a form of community service.

4.2.8 In any event, the exemption or reduction will expire thirty (30) days after the initial approval is given. If another exemption or reduction is needed, a new request must be submitted by the offender.

4.2.9 Offenders who are authorized for an exemption must perform community service work as approved by the Coordinator in lieu of paying the electronic monitoring fee. The offender must be eligible to leave his or her home for such work.

4.3 Should the offender fail to send payments to the account as outlined above, the offender may be removed from this program and returned to the Division of Corrections.

4.4 A computer program will be used by the program coordinator to account for fees collected and those still owed.

4.4.1 The program will identify offenders who are exempt or approved for a reduced fee.

4.4.2 All funds collected will be deposited into a Special Revenue Account in the State Treasurer's Office entitled "Electronic Monitoring Account".

4.5 To qualify for the electronic monitoring program, offenders must meet eligibility and selection requirements, which are set by separate Division of Corrections Policy Directive, sign a contractual agreement and participate in an orientation process.

SUMMARY OF PURPOSE AND CIRCUMSTANCE

Circumstances

Corrections presently utilizes electronic monitoring for approximately 100 inmates on any given monthly basis. Electronic monitoring is utilized for offenders who are under parole supervision rather than as incarcerated offenders.

Electronic monitoring is imposed for one of two reasons:

1. The offender is required by law to initially be placed on electronic monitoring. This is done for certain sex offenders and other offenders subject certain provisions of the Child Protection Act.
2. The Offender has had a minor violation of the terms of his parole, and the electronic monitoring is serving as an intermediate community based sanction. By imposing such a sanction it helps address the behavior of the offender without resorting to more costly incarceration.

“Electronic monitoring equipment” means an electronic device or apparatus approved by the division of corrections which is capable of recording or transmitting information regarding the offender's presence or non-presence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division of corrections shall not approve any monitoring device which is capable of recording or transmitting (i) visual images, except for that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system, or (ii) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels.

While Corrections may charge a supervision fee, an offender's inability to pay a fee does not preclude the offender from being eligible for this program. Approximately 10% offenders are indigent.

Purpose

The purpose of the proposed rule modification is to increase the fees assessed to offenders eligible to pay. This will help as the expanded ranks of parolees on intermediate sanctions, with indigent status as the parolee population expands through new programs such as accelerated parole. It will also allow for more sophisticated equipment to allow the transmission of alcohol levels which will help with more accurate and enhanced supervision.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Fees for Electronic Monitoring of Offenders

Rule Title:

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

West Virginia Division of Corrections

Address:

1409 Greenbrier Street

Charleston, WV 25311

Phone Number:

304-558-2036

Email: Loita.c.butcher@wv.gov**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The increase in supervision fees will increase revenue by approximately \$400.00 per month.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	2,400.00	4,800.00

Rule Title:

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Increased revenue will help defray associated costs with electronic monitoring of offenders by approximately \$4,800.00 annually.

TYPE OF SERVICE	OUR CURRENT COST	OFFENDER CURRENT COST	PROPOSED CURRENT COST
RF landline	\$2.05	\$6.00	No Change
RF cellular	3.75	6.00	\$8.00
GPS-passive	4.05	6.00	8.00
RF landline w/alcohol	4.50	6.00	8.00
RF cellular w/alcohol	6.00	6.00	10.00
GPS-active	6.25	6.00	10.00

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 19, 2011

Signature of Agency Head or Authorized Representative

M Christina Morris, DMAPS Dep Cab Sec