

Departmental Disclosure Statement

The Electronic Monitoring of Offenders Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Corrections.

The Department of Corrections certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 April 2015

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Part One: General Policy Statement

This Bill removes legislative barriers to the electronic monitoring of:

- *offenders released from a sentence of imprisonment of two years or less; and*
- *offenders sentenced to intensive supervision.*

Electronic monitoring can improve public safety by making authorities aware when offenders have failed to comply with conditions relating to their whereabouts. It is available under other sentences and criminal orders for this purpose.

As monitoring technologies (such as GPS) improve and become more cost-effective, the public interest in their use on offenders, at the discretion of the sentencing courts, increases. GPS monitoring is particularly useful, and may deter the commission of further offences, in cases where the offender is prohibited from entering areas associated with their risk of reoffending.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Bulman, P. (2013) <i>Sex Offenders Monitored by GPS Found to Commit Fewer Crimes</i>. National Institute of Justice Journal. Issue no. 271, February 2013. Retrieved from: https://ncjrs.gov/pdffiles1/nij/240700.pdf</p> <p>Centre for Criminology and Public Policy Research (Florida State University). (January 2010). <i>A Quantitative and Qualitative Assessment of Electronic Monitoring</i>. Retrieved from: http://www.criminologycenter.fsu.edu/p/pdf/EM%20Evaluation%20Final%20Report%20for%20NIJ.pdf</p> <p>Geoghegan, R. (2012). <i>Future of Corrections: Exploring the use of electronic monitoring</i>. Policy Exchange: London, United Kingdom. Retrieved from: http://www.policyexchange.org.uk/images/publications/future%20of%20corrections.pdf</p> <p>Padgett, K. G., Bales, W. D. and Blomberg, T. G. (2006). <i>Under surveillance: an empirical test of the effectiveness and consequences of electronic monitoring</i>, <i>Criminology and Public Policy</i>, 5(1), pp 61-92</p> <p>Renzema, M and Mayo-Wilson, E. (2005). <i>Can electronic monitoring reduce crime for moderate to high-risk offenders?</i> Springer: Journal of Experimental Criminology (2005). Pp 215-327. Retrieved from: http://correcttechllc.com/articles/14.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A regulatory impact statement entitled <i>Progressing the Sentencing (Electronic Monitoring) Amendment Bill</i> was prepared by the Department of Corrections in June 2014. In April 2015, it was retitled <i>Progressing the Electronic Monitoring of Offenders Legislation Bill</i> and revised to reflect a minor policy change. The revised statement is accessible at:</p> <ul style="list-style-type: none"> http://www.treasury.govt.nz/publications/informationreleases/ris www.corrections.govt.nz/resources/electronic_monitoring_of_offenders_legislation_bill 	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The above regulatory impact statement did not meet the threshold for receiving an independent opinion on the quality of the statement from the RIA Team based in the Treasury.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The costs (including financial costs of electronic monitoring) and benefits of policy options are explored in the regulatory impact statement.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
Analysis of these matters can be found in the regulatory impact statement.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The policy and the Bill have been considered by officials from the Department of Corrections with experience of international obligations in the justice sector.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Policy consideration of the changes made by the Bill assessed the likely impact on Māori. Officials from the Department of Corrections consulted with Te Puni Kōkiri on the policy and the Bill.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Clauses 5 and 8 of the Bill make failure to comply with a written direction of a probation officer (that is necessary for the effective administration of electronic monitoring) equivalent to a breach of the electronic monitoring condition. Offenders who "without reasonable excuse" breach a condition of release from imprisonment are liable to up to 12 months imprisonment or a fine of up to \$2,000. Offenders who "without reasonable excuse" breach a condition of intensive supervision are liable to up to 6 months imprisonment and a fine of up to \$1,500.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during policy development and at a few stages during the drafting of the Bill. The Ministry expressed concerns about the original proposal to limit the courts' power to impose electronic monitoring conditions by requiring them to have first obtained the advice of the Department of Corrections. This limit on the courts has been relaxed in the Bill, instead requiring them to have regard to the Department's advice on electronic monitoring before it imposes the condition.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Electronic monitoring inherently involves the collection, storage, access to and use of information about the whereabouts of offenders for purposes related to the maintenance of the law.</p> <p>The Bill extends the application of section 15(3)(f) and section 15A of the Parole Act to release conditions imposed by the courts. Section 15A(2) already specifies the purposes for which information obtained by the electronic monitoring of offenders may be used and is not amended by the Bill. Clause 8 of the Bill inserts an equivalent provision in the Sentencing Act (new section 54IA), which would apply to electronic monitoring imposed as a condition of intensive supervision.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted during policy development and again on a draft of the Bill. A number of changes were made to the policy advice in response to points raised by the Office.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Equivalent powers to impose electronic monitoring conditions are already used by the Parole Board when releasing offenders from prison or imposing special conditions of an extended supervision order. These provisions are generally workable and have allowed us to identify small improvements to the way they are drafted.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>It would be possible for offenders sentenced to a short prison sentence or intensive supervision before the commencement of the Bill to be made subject to a condition of electronic monitoring because of the existing power of a court under section 54F (for sentences of intensive supervision) or section 94 (for short prison sentences) to impose additional special conditions, on application by the offender or a probation officer. The Bill includes a provision confirming that this power may be used by the courts for the purpose of imposing EM conditions in respect of sentences imposed before the commencement of the Bill.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
<p>The Bill extends the application of existing offence provisions (sections 70A and 96 of the Sentencing Act) to the requirement to comply with written directions necessary for electronic monitoring.</p> <p>These provisions make it an offence to breach, without reasonable excuse, a condition of the sentence or order. They have been expressed this way to provide the accused person with an opportunity to defend the charge by establishing that they had a reasonable excuse for failing to comply with the condition.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
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The Bill makes electronic monitoring available as one of the conditions the courts may impose when sentencing an offender to a short prison sentence or intensive supervision. It therefore broadens an existing decision-making power.

The power to impose conditions is subject to limitations on the purpose for which special conditions can be imposed (section 93(3) and section 54I(1) of the Sentencing Act respectively). Decisions to impose electronic monitoring conditions would also be subject to sentencing and common law principles (e.g. relating to proportionality). They would also be subject to the requirement to consider advice from the Department on the electronic monitoring of the offender.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?

NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?

NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO