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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** AB 2658                      **Hearing Date:** June 21, 2022  
**Author:** Bauer-Kahan  
**Version:** February 18, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Juveniles: electronic monitoring*

## HISTORY

**Source:** Pacific Juvenile Defender Center

**Prior Legislation:** AB 2499 (Bonilla), Ch. 612, Stats. 2014  
SB 963 (Ashburn), Ch. 488, Stats. 2005

**Support:** California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Center on Juvenile and Criminal Justice; Communities United for Restorative Youth Justice; East Bay Community Law Center; Ella Baker Center for Human Rights; Fresh Lifelines for Youth; Fresno Barrios Unidos; Fresno County Public Defender's Office; Motivating Individual Leadership for Public Advancement; National Association of Social Workers, California Chapter; National Center for Lesbian Rights; Oakland Privacy; Silicon Valley De-Bug; Sister Warriors Freedom Coalition; The Gathering for Justice; W. Haywood Burns Institute; Young Women's Freedom Center; Youth Alliance; 1 individual

**Opposition:** Chief Probation Officers of California

**Assembly Floor Vote:** 54 - 16

## PURPOSE

***The purpose of this bill is to award custody credits off a ward's maximum time of confinement for time spent on electronic monitoring and require court review every 30 days to ensure that electronic monitoring is still appropriate.***

*Existing law* requires each county probation department to have a program of home supervision for minors to be referred. Provides that home supervision is a program in which persons who would otherwise be detained in the juvenile hall are permitted to remain in their homes pending court disposition of their cases. (Welf. & Inst. Code, § 840.)

*Existing law* provides that a minor who, while under the supervision of the probation department, removes their electronic monitor without permission, and who violates the terms and conditions of their probation relating to the proper use of the electronic monitor for more than 48 hours, is guilty of a misdemeanor. (Welf. & Inst. Code, § 871, subd. (d).)

*Existing law* authorizes counties to offer a program under which pretrial detainees being held in a county jail or correctional facility may participate in a home detention program under specified conditions, including electronic monitoring. (Pen. Code, § 1203.018.)

*Existing law* authorizes counties to create electronic home detention programs in which certain inmates may be placed during their sentence in lieu of confinement in a county jail. (Pen. Code, § 1203.016.)

*Existing law* requires when a defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, and other specified facilities, all days of custody of the defendant, including, home detention for inmates who otherwise would be in jail in lieu of bail, are credited toward the term of imprisonment or toward any fine that may be imposed. (Pen. Code, § 2900.5, subd. (a).)

*Existing law* authorizes good conduct and work performance credit for persons confined to home detention electronic monitoring. (Pen. Code, § 4019, subd. (a)(7).)

*Existing law* requires the Department of Justice (DOJ) to collect data pertaining to the juvenile justice system for criminal history and statistical purposes and make statistical data available to the public through the Open Justice Web portal. (Pen. Code, § 13010.5.)

*This bill* prohibits electronic monitoring devices from being used to converse with a minor or to eavesdrop or record any conversation.

*This bill* provides that a minor is entitled to have one day credited against the minor's maximum term of confinement for each day, or fraction thereof, that the minor serves on electronic monitoring. Provides that this provision applies to custody credits earned beginning January 1, 2023.

*This bill* requires the court, if electronic monitoring is imposed for a period greater than 30 days, to hold a hearing every 30 days to ensure that the minor does not remain on electronic monitoring for an unreasonable length of time.

*This bill* requires the court to consider whether there are less restrictive conditions of release that would achieve the rehabilitative purpose of the juvenile court when determining whether a length of time is unreasonable.

*This bill* requires the court to order removal of the electronic monitor or modify the terms of the electronic monitoring order to achieve the less restrictive alternative if less restrictive conditions of release are warranted.

*This bill* defines "minor" to mean a person under the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 602.

*This bill* defines "electronic monitoring" to mean technology used to identify, track, record, or otherwise monitor a minor's location or movement through electronic means.

*This bill* requires the DOJ to collect data regarding the use of electronic monitoring of juveniles.

*This bill* requires the DOJ's annual juvenile justice report to include all of the following information for each minor:

- The total number of days in a calendar year that the minor was subject to electronic monitoring.
- The total number of days in a calendar year that the minor was detained in juvenile hall for a violation of a term of the minor's electronic monitoring contract not amounting to a new violation of law.
- The reason the minor was placed or reinstated on electronic monitoring: a new violation of law; a violation of a court order not amounting to a new violation of law; or a violation of a term of the minor's electronic monitoring contract that did not constitute a new violation or law or a violation of a court order.
- The reason a minor on electronic monitoring was detained in juvenile hall: a new violation of law, a violation of a court order not amounting to a new violation of law; or a violation of a term of the minor's electronic monitoring contract that did not constitute a new violation or law or a violation of a court order.

*This bill* requires the above information that is required to be collected to be cross-referenced with information about the age, gender, ethnicity, and offense of the minors subject to these court actions.

*This bill* requires the DOJ's annual juvenile justice report to include data pertaining to the use of electronic monitoring beginning with the report due on July 1, 2026, for the preceding calendar year.

*This bill* includes uncodified findings and declarations.

## COMMENTS

### 1. Need For This Bill

According to the author:

In California, young people in the juvenile justice system are increasingly imprisoned in their homes and tracked 24/7 by electronic monitors ("EM"), also known as GPS ankle-bracelets. Unlike adults, youth can remain on ankle monitors for months or even years without earning any custody credits. The disparity between age groups and the disproportionate racial impact of this monitoring has gone unchecked for years.

Juvenile halls are disproportionately filled with youth of color—primarily African-American and Latino youth. Judges typically require EM as a condition of release from custody, causing EM to be used primarily on youth of color. Electronic monitors are visible to others, essentially "branding" youth of color as "criminals." This results in disproportionate suspensions and increases the "school-to-prison" pipeline because youth on EM are stigmatized and feel unwelcome at school. Participation in school sports and other pro-social activities can also be physically difficult or prohibited while on EM.

The isolation caused by EM can lead to depression, anxiety, and increased family conflict. Youth are surveilled in ways that are not legal for adults. The stigma and inequity of EM are inflicted arbitrarily and disproportionately against the youth of color.

Overall, electronic monitoring in the juvenile justice system has inadequate regulation and oversight. Youth on EM cannot count their time served as credit toward their sentence, which is allowed for adults. Additionally, courts are not required to hold review hearings to explore less restrictive alternatives. Only the most rudimentary data exists about the use of electronic monitoring in California's juvenile courts, and data collection is needed to identify racial disparities and poor outcomes.

## 2. Electronic Monitoring

Electronic monitoring is used in the criminal and juvenile justice systems as a form of detention for both pre-trial or pre-adjudication detainees, and as a form of post-conviction or post-adjudication supervision.

There are two types of electronic monitoring devices: radio frequency and global positioning system (GPS). Radio frequency utilizes a home monitoring unit set to detect a bracelet via radio waves within a specified range and then sends confirmation to a monitoring center. This is primarily used for curfew monitoring. GPS technology uses radio signals to communicate with satellites orbiting the earth and locates a device by measuring the distance between multiple satellites and the device to determine the person's location. GPS tracking can be active—where the transmitter monitors a person using satellites and reports location information in real time at set intervals, or passive—where the transmitter tracks a person's activity and stores location information for download at a later time.

A report by the Samuelson Law, Technology & Public Policy Clinic at U.C. Berkeley School of Law found that the proliferation of electronic monitoring of youth is one of the most significant changes in the juvenile justice system in recent decades. Using data from across the state, the report concluded that the use of electronic monitoring disproportionately affects people of color, and that the conditions of use and the repercussions for violating those conditions vary widely by county. The report opined that some of the terms and conditions associated with electronic monitoring raised privacy concerns, while other were so stringent that they potentially set up juveniles for failure. Finally, the study concluded that some of the terms and conditions associated with electronic monitoring raise concerns that they do not seem sufficiently related to the stated goals of youth rehabilitation. (Coen, Tung, Koningisor, & Crump, *Electronic Monitoring of Youth in the California Juvenile Justice System* (2017) <[https://www.law.berkeley.edu/wp-content/uploads/2017/04/Report\\_Final\\_Electronic\\_Monitoring.pdf](https://www.law.berkeley.edu/wp-content/uploads/2017/04/Report_Final_Electronic_Monitoring.pdf)>.)

## 3. Credits

Minors are entitled to have their maximum period of confinement reduced by any predispositional time spent in physical confinement. (*In re Eric J.* (1979) 25 Cal.3d 522; *In re Stephon L.* (2010) 181 Cal.App.4th 1227.) Time spent in “physical confinement,” defined as “placement in a juvenile hall, ranch, camp, forestry camp, or secure juvenile home pursuant to section 730, or in any institution operated by the Youth Authority” (Welf. & Inst. Code, § 726,

subd. (c)), qualifies as credit against the maximum period of confinement. (*In re Harm R.* (1979) 88 Cal.App.3d 438, 441-45.) Time spent in a nonsecure placement does not count. (*Id.* at p. 442.) Home detention, even spent in an electronic monitoring program at the minor's residence, does not qualify for custody credit. (*In re Lorenzo L.* (2008) 163 Cal.App.4th 1076, 1080.)

In contrast, adult defendants receive custody credits for time served on electronic monitoring (Pen. Code, § 2900.5) Additionally, both pretrial and post-sentence adult defendants who have served time under electronic monitoring home detention are eligible to earn conduct credits. (Pen. Code, § 4019; see also *People v. Yanez* (2019) 42 Cal.App.5th 91, 95.) In *People v. Gerson* (2022) 74 Cal.App.5th 561, the Fourth District Court of Appeal held that a person who is out on bail and subject to electronic monitoring on home detention is similarly situated to persons participating in an pre-sentencing electronic monitoring program under Penal Code section 1203.018 and a rational basis does not exist for treating these categories of individuals differently. Accordingly, the defendant was entitled to pre-conviction custody credit and pre-conviction conduct credit on equal protection grounds. (*Id.* at p. 582.)

The proponents of this bill argue that juveniles subject to pre-adjudication and post-adjudication electronic monitoring are similarly situated to adults criminal defendants because both categories of individuals are subjected to similarly restrictive home detention conditions and both are avoiding spending time in local custody.

#### **4. Effect of This Bill**

This bill would entitle a ward of the juvenile court placed on electronic monitoring to receive credit against the juvenile's maximum period of confinement for time spent on electronic monitoring. This bill also would require the juvenile court to review the necessity for continued electronic monitoring every 30 days if electronic monitoring is imposed for a period greater than 30 days. In making the determination, the court would be required to consider whether there are less restrictive conditions of release that would achieve the rehabilitative purpose of the juvenile court. If less restrictive conditions of release are warranted, the court would be required to order removal of the electronic monitor or modify the terms of the electronic monitoring order to achieve the less restrictive alternative. Finally, this bill would prohibit the use of electronic monitoring devices to converse with a minor or to eavesdrop or record any conversation.

#### **5. Argument in Support**

The Pacific Juvenile Defender Center, the bill's sponsor, writes:

In California, young people in the juvenile court system are increasingly imprisoned in their homes and tracked by electronic monitors, also known as GPS ankle-bracelets. Around 10,000 young people in California's juvenile justice system are tracked each year on electronic monitors. Often viewed as an alternative to incarceration, this type of intensive surveillance is actually an alternative *form* of incarceration that often subjects youth to considerable harm. Currently, there are no statutory limits on how long youth can be kept on ankle monitors, even for minor crimes. As a result, youth may be kept on electronic monitors for months at a time and may cycle on and off the monitor, and in and out of juvenile hall, for noncriminal behavior such as meeting up with friends, failing to charge their monitor, or seeing family outside the home.

There is no convincing empirical evidence that electronic surveillance of youth furthers the rehabilitative goals of the juvenile court, especially when imposed for lengthy periods of time. To the contrary, the large body of research about adolescent brain development suggests that subjecting youth to long-term electronic surveillance is harmful to their development during the critical period of adolescence.

AB 2658 corrects a longstanding inequity between juvenile and adult court by affording custody credits to youth subject to electronic monitoring.

Adults receive both “actual” custody credit as well as “conduct” credit for sentences served on electronic monitors. As a result, an adult serving a jail sentence as a condition of probation typically will complete their sentence after serving half of it on electronic monitoring. In contrast, despite the significant restriction on liberty, youth receive *no* custody credit for being subject to electronic monitoring. This inequity requires legislative correction.

Notably, section 726(d)(1) of the Welfare and Institutions Code states that a minor cannot be treated more harshly than an adult or incarcerated for longer than an adult would be for the same crime. This principle is incompatible with current law, which fails to afford any custody credits for youth on electronic monitors. As a result, youth can remain on ankle monitors for months or even years, because no credits are accrued against the maximum term of confinement. AB 2658 narrows this drastic inequity.

AB 2658 requires periodic court reviews to ensure that youth are on electronic monitors for reasonable lengths of time and only when the juvenile court finds that less restrictive alternatives would be inappropriate.

Under current law, courts may order lengthy sentences on electronic monitors without setting interim review hearings to consider whether continued monitoring is furthering the minor’s rehabilitation. In addition, youth are often incarcerated repeatedly for not adhering to all the rules of electronic monitoring “contracts,” even when those rules are overly restrictive and do not comport with modern understanding about adolescent brain science and healthy adolescent development.

For example, youth on electronic monitors typically are ordered to be at home when they are not at school. Youth subject to home detention generally are not allowed to participate in any unscheduled activities. Young people on monitors are often prohibited from normal, developmentally-appropriate activities such as spending time with friends, attending family events, playing basketball at the park, or riding a bike. Given what is now known about the psychological impact of negative childhood experiences, any form of electronic surveillance that puts such extreme limitations on a youth’s ability to engage in age-appropriate, pro-social activities may have a harmful impact on their development. As such, reviews are necessary to ensure juvenile court judges can regularly exercise discretion to consider whether continued monitoring is necessary, whether less restrictive alternatives are appropriate, and whether the youth’s rehabilitation is being impeded or furthered by continued monitoring. ...

## 6. Argument in Opposition

According to the Chief Probation Officers of California:

[W]e write in opposition to AB 2658 unless amended to remove the provisions pertaining to credits and reflect additional changes to the intent language. Recognizing one of the stated goals of the bill which is for courts to regularly review the use of electronic monitoring to determine the necessary length of time and whether less restrictive options can address the safety and rehabilitative needs of the youth, we see the language on the 30 day hearing process as aligning with that goal.

However, our concerns stem from language in Section 3 of the bill which establishes day for day credits against a minor's maximum term of confinement for each day electronic monitoring may be used by the courts. While it appears parity is being attempted with the adult system, it's important to note that credits applies to adults in the criminal court are applied when electronic monitoring is used for a sentence "in lieu" of a custodial setting but there are other circumstances where it is used and custody credits are not awarded. In the juvenile context, electronic monitoring is often utilized as something other than as custodial alternative, however, this bill applies no distinction between the various ways electronic monitoring is used and circumstances where credits would not be appropriate. Due to differences in how the juvenile and criminal courts are structured, overlaying the credit system in the adult criminal justice system is not directly applicable to the juvenile system and the manner in which it operates. For a variety of reasons, the law does not treat juveniles who have committed offenses the same as an adult in criminal court. While well intentioned, applying the criminal court process is not a direct comparison and seeking to align juvenile law with provisions in criminal laws may lead to potential unintended consequences.

Additionally, although the bill has language that credit earning would be prospective, we have historically seen these types of matters applied retroactively and that would be an important consideration in terms of what impacts that would have on the current term of a youth.

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