

## SJC Rules Automatic Placement on GPS Violates Ex-Post Facto Clause

Contributed by Swomley Law Blog  
08.25.2009 : Tue  
Last Updated 08.26.2009 : Wed

Last week, the Supreme Judicial Court ruled that a law passed by the Mass. Legislature in 2006 violated the ex-post facto clause. Initial reactions seemed to overstate the breadth of the opinion. Indeed, the opinion was more narrow than most people may think and simply put things back to the way they were before--where judges still have broad discretion to impose GPS on any person on probation.

The law was, and remains, simple: any person placed on probation after Dec. 20, 2006 for a sex offense had to be placed on GPS monitoring. The law was clear that a judge had no discretion; the imposition of GPS was, and is, mandatory. The probationer in this case had committed his crime before the operative date of Dec. 20, 2006 but was placed on probation after that date. This is not uncommon, as it sometimes takes years to prosecute a case. The probationer challenged the condition, arguing that the law violated the constitutional right against ex-post facto laws. The SJC agreed, issuing a narrow ruling. They basically held that anyone whose offense took place before that date could not automatically be placed on GPS pursuant to that statute.

While that ruling may affect many persons, and may, on its face, seem like it will have a major impact, the truth is the ruling will not change things all that much. First, the court did not say anything about persons whose offenses took place after Dec. 20, 2006. Thus, anyone who is on GPS in that scenario will remain on GPS. While they may have different constitutional claims, and those claims may one day be reviewed by the SJC, the prospects of overturning the law is not great. Second, the court struck down the statute in that it mandated GPS. The court did not change anything about a judge's discretion to impose GPS if the specific case merits it. Therein lies the most important part of the decision. The Commonwealth or the Probation office can still petition judges to make independent determinations about whether a specific person should be placed on probation.

Thus, many persons may still be placed on GPS. The difference is that, if they are, it will be only after a judge makes a specific finding that it is necessary.

There are many problems with the law. There are many problems with any law that creates a one-size-fits all solution to a problem that may or may not even exist. There is good evidence that placing persons on GPS monitoring who do not deserve it, and who present a low risk to reoffend, actually does more harm than good. It can destabilize lives, break up families, and cause great shame. While some may say that is a small price to pay for safety, the irony is that statutes like this--and conditions like these--make people more dangerous. If the ultimate goal of probation is rehabilitation and assistance in assimilating back into society, mandated GPS where it is not necessary results in more people violating probation and places them in high risk situations they would otherwise not be in.

Therefore, while the SJC's ruling will free some from this condition, for those who still fall under the provision of the law, the law will continue to do more harm than good--for them and society. The law is not rational; it is an easy political win that will not accomplish what it sets out to do.

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