



MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: February 23, 2018

RE: OPPOSITION TO SENATE BILL 196 P.N. 185 (HUGHES)

[SB 196](#) (PN 185) would propose a drastic change to the Protection from Abuse Act,¹ giving civil courts the authority to mandate that anyone subject to a protection from abuse (PFA) order wear an electronic monitoring device. As a result, this bill threatens an extraordinary restriction of civil liberties and a vast increase of governmental surveillance for thousands of people following a civil action.

On behalf of the 59,000 members of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 196.

SB 196 would impose surveillance for civil matters with a lower burden of proof.

The PFA process is a civil, *not criminal* matter. Protection from abuse hearings are not criminal trials and do not require the same standard of proof or evidentiary protections as criminal matters. When requesting a PFA, the one alleging abuse is not required to establish that the abuse occurred beyond a reasonable doubt, but rather, only by a preponderance of the evidence.² PFAs are, and should be, sought wholly independently of whether a victim or the district attorney's office decide to file criminal charges. If someone violates a court-ordered PFA, at that point, criminal contempt charges may be brought against the violator.

SB 196 would establish an excessively invasive and burdensome process.

According to the [Administrative Office of Pennsylvania Courts](#), nearly 40,000 PFA petitions were filed in 2016 alone.³ If electronic monitoring were assigned in even a fraction of these cases, thousands of people could be subject to it. Under this bill, courts could impose electronic monitoring for the duration of the protection order, up to three years. The device would continuously track a person's location and transmit that data to the Pennsylvania State Police (PSP). And because the bill contains no provisions regarding data destruction, the state police could maintain this personal information indefinitely.

In addition, this law could impose significant financial costs for those monitored. When counties impose electronic monitoring costs for those on probation, the county charges those probationers between \$5 and \$25 dollars a day. If a judge ordered someone to be monitored under this statute, the [fees could cost](#) the person monitored as much as \$9,000 a year.⁴ These court-mandated costs risk siphoning money from other critical obligations facing a person on probation, such as restitution or child support.

¹ [23 Pa. C.S. § 6101](#).

² [23 Pa. C.S. § 6107\(a\)](#).

³ "Protection from Abuse | Research & Statistics." *Unified Judicial System of Pennsylvania*, Administrative Office of Pennsylvania Courts, 2016, <https://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/protection-from-abuse>.

⁴ Pa.B. Doc. No. 12-1076, <https://www.pabulletin.com/secure/data/vol42/42-24/1076.html>. Costs assume that the county followed the fee schedule established for electronic monitoring while on probation.

SB 196 would create a false sense of security for victims.

This legislation will not make endangered victims safer. The location data collected from the electronic monitoring devices would not be sent to victims but, instead, would go directly to the Pennsylvania State Police. For monitoring to successfully protect victims, PSP would have to actively track the location of everyone on an electronic monitor—roughly 5,000 thousand people at any one time—and then send notifications to every victim whose abuser came within their proximity. Unless PSP intends to hire dozens of staff to sort through this data and alert victims of potential threats, this bill will do nothing to actively prevent abuse. Even worse, this process could give victims a false sense of security by allowing them to erroneously believe they are safe from their abuser.

Moreover, this bill allows courts to act without the victim's consent or input. A victim could object, and a judge could impose electronic monitoring regardless of the victim's wishes.

SB 196 fails to address judicial oversights that contributed to Alina Sheykhet's murder.

SB 196 was drafted in response to the horrific murder of Alina Sheykhet, allegedly at the hands of her ex-boyfriend, Matthew Darby, in October 2017. At the time of her murder, Matthew Darby was out on bail, despite the fact he had an open PFA *and* two active criminal cases against him—a rape charge in Indiana County and a felony criminal trespass charge in Allegheny County (for breaking into Ms. Sheykhet's home in September). [Court records](#) show that in both of Mr. Darby's criminal cases, monetary bail had been set and paid.⁵

Electronic monitoring and house arrest are routinely ordered as special conditions of bail in criminal cases. Both the judge in Indiana County and the judge in Allegheny County had the authority to place Matthew Darby on electronic monitoring as a condition of his release on bail. But neither judge ordered him to be monitored, both ignoring a glaring danger in each case.

Rather than addressing the alarming instances of judicial oversight revealed by Alina Sheykhet's tragic murder, SB 196 establishes an invasive and burdensome process that risks bringing thousands of people under correctional control without adequate due process.

For these reasons, we urge you to oppose Senate Bill 196.

⁵ Commonwealth v. Darby, MJ-40201-CR-119-2017 and Commonwealth v. Darby, MJ-05003-CR-11294-2017, <https://ujportal.pacourts.us/DocketSheets/MDJCourtSummaryReport.ashx?docketNumber=MJ-40201-CR-0000119-2017>.