



On approval of the Rules, conditions and grounds for implementation of electronic tracking means

Unofficial translation

Resolution of the Government of the Republic of Kazakhstan of December 24, 2014 No. 1369

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In accordance with Article 137, part four of the Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014, the Government of the Republic of Kazakhstan hereby **RESOLVED** as follows:

1. Approve the attached Rules, conditions and grounds for implementation of electronic tracking means.
2. This resolution shall enter into force on January 1, 2015 and shall be subject to official publication.

*Prime Minister
of the Republic of Kazakhstan*

K. Massimov

Approved
by the resolution of the Government
of the Republic of Kazakhstan
dated December 24, 2014 №1369

Rules, conditions and grounds of implementation of electronic tracking mean

1. General provisions

1. These Rules, conditions and grounds for implementation of electronic means of tracking (hereinafter referred to as the Rules) have been developed in accordance with Article 137, part four of the Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014 (hereinafter referred to as the Criminal Procedure Code) and shall determine the procedure, conditions and grounds for implementation of electronic means of tracking in relation to suspects, accused, defendants.

2. An additional restriction in the form of implementation of electronic tracking means can be used in relation to persons to whom the preventive measures provided for in Article 137 of the Criminal Procedure Code have been chosen, with the exception of the transfer of a soldier under the supervision of the command of a military unit and detention.

3. The implementation of electronic tracking means, verification and receipt of information about the location of the suspect, accused, defendant shall be carried out by a subdivision (hereinafter referred to as the subdivision) determined by the head of the body conducting the criminal process.

2. Procedure for the implementation of electronic tracking means

4. The body conducting the criminal process may apply an additional restriction both when choosing a preventive measure and when the grounds provided for in paragraph 20 of these Rules arise. At the same time, the resolution on the implementation of a preventive measure shall make a note of the implementation of electronic tracking means and shall explain to the suspect, accused, defendant their appointment, the need for use, including the consequences of violation of the rules for their implementation.

Clarification to a minor suspect, the accused, the defendant shall be carried out in the presence of his legal representatives or the guardianship and custody authority.

The duties and restrictions of the suspect, the accused, and the defendant shall be determined by criminal procedure legislation.

5. When deciding on the implementation of electronic tracking means, the body conducting the criminal process sends the suspect, accused for a medical examination to establish his general health and the absence of contraindications in their use, and also shall take away from him a receipt stating that there is no threat to the health of persons living with him together.

6. To establish electronic means of tracking and further exercise control over the suspect, the accused, the defendant, the body conducting the criminal process in the proceedings of which the criminal case is pending, within twenty-four hours from the date of the decision on the election of a preventive measure using electronic means of tracking, shall send the following documents to the subdivision:

1) copies of decisions on the qualification of the act, with the exception of cases provided for by Article 139 of the Criminal Procedure Code, and the application of a preventive measure, certified by the seal of the body conducting the criminal process;

2) a certificate in a criminal case, including information about:

the crime committed;

the defender of the suspect, the accused;

finding a suspect, the accused, the defendant registered in specialized health care institutions;

contact numbers of the investigator or interrogator or his substitute, in the proceedings of which the criminal case is located;

information about the residence, criminal record, place of work or study of the suspect, the accused, the defendant;

3) a copy of the identity document of the suspect, the accused, the defendant under Article 300 of the Criminal Procedure Code.

7. After receiving the documents provided for in paragraph 6 of these Rules, the subdivision shall immediately proceed with the execution of the resolution of the body conducting the criminal process, namely shall:

1) carry out the installation, issuance and activation of electronic tracking means at the place of execution of the preventive measure of the suspect, the accused, the defendant;

2) draw up an act of receiving and transmitting an electronic tracking device with a suspect, accused, defendant;

3) explain to the suspect, the accused, the defendant against signature a memo on security measures and rules for the operation of established electronic tracking equipment. Minor suspects, accused, defendants shall be clarified in the presence of legal representatives, defense counsel or guardianship authority;

4) after the registration of the resolution and registration of the suspect, the accused, the defendant immediately shall send to the body leading the criminal process, notice of the adoption of the resolution for execution.

8. Employee of the subdivision shall:

1) constantly collect information using data from the monitoring panel on compliance with the established duties and restrictions by the suspects, the accused, the defendants;

2) in case of technical problems of electronic tracking means, take measures to establish the causes and eliminate them;

3) upon receipt of information on the facts of damage, unauthorized removal by the suspect, the accused, the defendant of electronic tracking equipment, violations of duties and restrictions, as well as technical problems (failures and failures in work) immediately report to the head of the unit and the body conducting the criminal process, and in its absence - to the head or duty unit of the body. Within twenty-four hours, send written notice to the criminal process authority to take appropriate measures, including for the organization of search activities;

4) upon receipt of a signal of damage, disconnection or unauthorized removal by the suspect, accused, defendants of electronic tracking equipment, immediately organize the departure of employees to the place of execution of the preventive measure to check their serviceability.

9. At the request of the body conducting the criminal process in the proceedings of which the criminal case is pending, in relation to the suspect, accused, defendant, the unit shall provide information within twenty-four hours related to the monitoring of the presence of a person and compliance with the assigned duties and restrictions.

10. The grounds for canceling the use and removal of electronic tracking means by the division shall be:

1) cancellation or modification of the preventive measure in accordance with Article 153 of the Criminal Procedure Code;

2) court verdict;

3) the death of the suspect, the accused, the defendant.

11. When accepting into its proceedings a criminal case received under investigation against the suspect, the accused, to whom a preventive measure is applied using electronic

means of tracking, as well as the announcement by the court of the verdict to the defendant, the unit shall draw up an act of receiving and transmitting an electronic means of tracking with the suspect, the accused, the defendant on its removal and installation.

12. Damage for intentional damage or destruction of electronic means of tracking by the suspects, the accused, the defendants shall be compensated in criminal procedure and civil procedure.

3. Conditions for implementation of electronic tracking means

13. The implementation of electronic tracking means shall be allowed, provided that measures are taken to hide them from observation by others and must be carried out taking into account the places visited by the suspects, the accused, and ways of moving them, as well as age, health, marital status and lifestyle.

14. Electronic tracking means shall be used in the presence of a permanent or temporary residence of the suspect, the accused, the defendant in the territory of the Republic of Kazakhstan.

15. The application of an additional restriction shall not be allowed in the presence of medical contraindications to the health of the suspect, the accused, the defendant.

16. The head of the subdivision, in accordance with the duties and restrictions established by the suspect, the accused, the defendant, on the basis of information characterizing his identity, shall make a decision on the installation of the relevant equipment, based on the technical possibility.

17. If, for technical reasons, it is impossible to further implementation of electronic tracking means against the suspect, the accused, the defendant, the subdivision shall take measures to replace them with other means, if a malfunction is detected; it immediately shall replace electronic tracking means.

18. If the suspect, the accused, the defendant for medical reasons were taken to a health care institution and hospitalized, the subdivision immediately notifies the criminal authority and the health care institution of the fact that electronic means of tracking have been used against the person.

4. Grounds for implementation of electronic tracking means

19. The basis for the implementation of electronic means of tracking against the suspect, the accused, the defendant shall be the decision of the body conducting the criminal process, on the application of a preventive measure in the form of a recognizance not to leave the place and proper behavior, personal guarantee, giving a minor under supervision, bail, house arrest with a note about the need for additional restriction.

20. Electronic tracking means shall be used in cases of:

- 1) violations by the suspects, the accused, the defendants of one or more obligations stipulated by legislation in accordance with the preventive measure applied to them;
- 2) refusal by the court to apply for the authorization of a preventive measure in the form of detention on sufficient grounds;
- 3) the possibility of a threat to the life, health, property of individuals upon their application to establish the movement and location of the suspect, the accused, the defendant.