

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283 w/CS Electronic Monitoring of Probationers and Community Controllees
SPONSOR(S): Rep. Baker
TIED BILLS: **IDEN./SIM. BILLS:** SB 2018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>13 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
3) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Section 948.03, F.S. provides standard terms of probation for persons who have pled to or been found guilty of certain serious sexual offenses. One standard term of probation listed in the statute is a provision that, when deemed necessary by the community control or probation officer and ordered by the court, the offender must wear an electronic monitoring device.

HB 1283 w/CS provides that a court must order persons convicted of the serious sexual offenses listed above to be placed on electronic monitoring. The bill also provides that the electronic monitoring system must identify the location of a monitored person, and timely report the presence of the person near a crime scene, entrance into a prohibited area, or departure from specified geographical limitations. The system must monitor a minimum of 1,000 offenders on state community control or probation. If more than 1,000 are probationers or community controllees who have been court ordered to submit to electronic monitoring pursuant to s. 948.03(5)(b) or (c), F.S. are eligible for electronic monitoring, the department must determine which offenders to monitor based on the risk assessment criteria. If there exist less than 1,000 sex offenders who are subject to electronic monitoring requirements, the bill provides that the remaining offenders tracked shall be offenders under the jurisdiction of the department who have previous convictions for sexual offenses or violent crimes and who have been court ordered to submit to electronic monitoring.

The bill also creates a statewide steering committee to oversee and guide the system and provide for project evaluation. The committee is to be comprised of representatives of the offices of Attorney General, the Florida Department of Law Enforcement, the Department of Corrections, the Parole Commission, sheriff's offices, police departments, and other criminal justice officials, as deemed appropriate. The bill also appropriates \$7.8 million for the purpose of creating the offender tracking and crime-reporting system.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1283a.ps.doc
DATE: March 25, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Because the bill mandates electronic monitoring of certain sexual offenders where under current law such monitoring is discretionary, the offender's individual freedom is limited.

B. EFFECT OF PROPOSED CHANGES:

Under current law, terms of probation are either standard or special. Standard terms of probation are provided for in statutes, and because they are the same in every case, these terms do not require oral pronouncement at sentencing. Special terms of probation are in addition to the statutorily mandated terms and require oral pronouncement. Violations of special terms of probation not orally pronounced will not be enforceable. *Jones v. State*, 661 So.2d 50 (Fla 2nd DCA 1995) (Trial court's imposition of special conditions of probation without announcing those conditions at sentencing was improper.)

Section 948.03, F.S. provides standard terms of probation for person who have plead to or been found guilty of certain serious sexual offenses. These include ch. 794, F.S. (Sexual Battery), ss. 800.04, (Lewd or Lascivious Offenses), 827.071, (Use of Child in Sexual Performance), and 847.0145, F.S. (Child Porn). These terms include:

- A mandatory curfew
- If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school
- Active participation and successful completion of a sex offender program
- A prohibition on any contact with the victim
- If the victim was under 18, a prohibition on working for pay or as a volunteer at any school, day care, park, playground, or other place where children regularly congregate
- A prohibition on owning pornography
- A requirement to submit two specimens of blood to FDLE for registration in the FDLE DNA databank
- A requirement that the offender make restitution to the victim for any medical or psychological services
- Submission to a warrantless search by probation officers
- Annual polygraphs to obtain risk management information
- Maintenance of a driving log
- Prohibition against maintaining or using a post office box without permission from a probation officer
- If there was sexual contact, submission to an HIV test

The only other standard term of probation listed in the statute is a provision that, when deemed necessary by the community control or probation officer and ordered by the court, the offender must wear an electronic monitoring device. Under s. 948.03(2)(a), F.S., the department is also authorized to provide electronic monitoring of any offender on community control for any offense.

According to the Department of Corrections, a statistical analysis of the offenders placed on community control during fiscal year 2000-2001 reveals that offenders with electronic monitoring are 55.7% less likely to commit a new offense than offenders not on electronic monitoring, during a two-year period following placement on electronic monitoring. The department uses three different types of electronic monitoring systems: radio frequency, Passive Global Positioning Satellite, and Active Global Positioning Satellite.

1.) Radio frequency monitoring includes a tether device, worn around an offender's ankle that provides an electronic curfew check to ensure the offender remains in compliance with the approved scheduled activities whether at home or away. The officer receives a daily summary of the offender's activities for the previous day that includes indications when the offender is not keeping a pre-approved schedule, enabling the officer to question and confirm activities accordingly. This form of monitoring has been used by the department since 1987. The equipment cost of RF monitoring is \$2.75 a day.

2.) Passive Global Positioning Satellite (GPS) electronic monitoring uses different technology than the radio frequency, but provides many of the same features. An important difference from the Active GPS monitoring is that there no ability in the Passive system to provide real-time monitoring. Information is downloaded daily. The equipment cost of this system is \$4.00 a day.

3.) Active GPS functions much in the same was as Passive GPS with the important exception that electronic monitoring requires the offender to wear an anklet tethered to a portable tracking device that can provide the features associated with radio frequency monitoring when the offender is home in addition to providing live "points" as to where the offender is in the community at any given time. The ability to set inclusion and exclusionary boundaries at the victim's residence or place of employment is another important feature. If these perimeters are broken, immediate notification can be sent to the victim, law enforcement and on-call department staff. This provides the officer with a tool to hold the offender accountable for being where required, when scheduled. It can ensure specific routes to destinations are followed (so as to avoid known victim locations or restricted areas such as schools and playgrounds) and remove an offender's ability to move about the community with relative anonymity. The points gathered on each offender are archived for future use if needed by law enforcement investigating criminal activity. The equipment cost for this system is \$9.17 to \$10.17 a day.

The department currently supervises 873 persons in community control, certain sex offenders, and post prison release offenders with serious offenses with electronic monitoring.

Supervision Type / Device Type	Sex Offenders **	Others	Total
Radio Frequency			
Probation	19	11	30
Community Control	26	152	178
Post Prison	6	22	28
RF Total	51	185	236
Active Global Positioning			
Probation	65	27	92
Community Control	141	194	335
Post Prison	27	31	58
Active GPS Total	233	252	485
Passive Global Positioning			

Probation	4	1	5
Community Control	6	139	145
Post Prison	1	1	2
Passive GPS Total	11	141	152
Total	295	578	873

According to the department, in Fiscal Year 2002-2003, there were 1,251 offenders placed on probation or community control for a violation of the specified sexual offenses of include ch. 794, F.S. (Sexual Battery), ss. 800.04, (Lewd or Lascivious Offenses), 827.071, (Use of Child in Sexual Performance), and 847.0145, F.S. (Child Porn).

HB 1283 w/CS provides that a court must order persons convicted of the serious sexual offenses listed above to be placed on electronic monitoring. The bill also provides that the electronic monitoring system must identify the location of a monitored person, and timely report the presence of the person near a crime scene, entrance into a prohibited area, or departure from specified geographical limitations. The system must monitor a minimum of 1000 offenders on state community control or probation. If more than 1,000 are probationers or community controllees who have been court ordered to submit to electronic monitoring pursuant to s. 948.03(5)(b) or (c), F.S. are eligible for electronic monitoring, the department must determine which offenders to monitor based on the risk assessment criteria. If there exist less than 1,000 sex offenders who are subject to electronic monitoring requirements, the bill provides that the remaining offenders tracked shall be offenders under the jurisdiction of the department who have previous convictions for sexual offenses or violent crimes and who have been court ordered to submit to electronic monitoring.

The bill also creates a statewide steering committee to oversee and guide the system and provide for project evaluation. The committee is to be comprised of representatives of the offices of Attorney General, the Florida Department of Law Enforcement, the Department of Corrections, the Parole Commission, sheriff's offices, police departments, and other criminal justice officials, as deemed appropriate. The bill also appropriates \$7.8 million for the purpose of creating the offender tracking and crime-reporting system.

C. SECTION DIRECTORY:

Section 1. amends s. 948.03, F.S.

Section 2. amends s. 948.11, F.S.

Section 3. appropriates \$7.8 million dollars to create a offender tracking and crime-reporting system.

Sections 4 and 5 reenact ss. 948.03, F.S. and 958.03, F.S., respectively, for the purpose of incorporation by reference.

Section 6. providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Because offenders are charged an electronic monitoring fee pursuant to 948.09(2), F.S. the Department of Corrections estimates that the following revenues can be anticipated:

Fiscal Year	Amount
FY 2004-05	\$41,093
FY 2005-06	\$179,759
FY 2006-07	\$416,360
FY 2007-08	\$652,961
FY 2008-09	\$889,562

2. Expenditures:

The bill appropriates \$7.8 million to create the offender tracking and crime-reporting system. Because the bill requires some participation be local and state law enforcement agencies in reporting the location of criminal incidents, there may be some fiscal impact to state and local governments as well.

Department of Corrections Fiscal Analysis

Based on historical data, an average of 1,307 sex offenders fitting the criteria of this bill are admitted to supervision each year. The most recent report on outcomes of sex offenders on GPS indicates that 23.4% will be revoked after 2 years (63% of which are sentenced to prison.) Active GPS supervision would require caseload ratios of 17:1 to be effective while supervision of other sex offenders and post prison release offenders is currently set at and would remain at a maximum of 40:1. These supervision functions are performed by Correctional Probation Specialists.

In addition, the requirements of this bill will require extensive technical assistance to connect each offender to the system, test the device at each residence, act as a “help desk” contact to resolve technical problems that arise from use of the equipment, enter enrollment data and provide analysis of the data gathered from the electronic monitoring system each day and ensure criminal incidents are matched to offender’s whereabouts and also to provide timely reports of the data to both probation officers and law enforcement. The department recommends 25 new non-certified probation specialist positions to perform these duties at an annual cost of \$1,046,775 for FY 04-05. It is anticipated this position would be a Probation and Parole Specialist (non-certified position). One of these positions would be located in each circuit with the exception of Miami, Tavares, Jacksonville and Orlando, which each would have two (2) due to the admission rates in those circuits for the specified sex offenders, and one (1) positions in the Office of Community Corrections to coordinate equipment procurement, vendor issues, provide training and other assistance. Although the need for these positions may increase in the future, it is difficult to assess a workload factor at this time on which future FTE’s might be based.

The fiscal impact of placing electronic monitoring on 1,307 sex offenders eligible under this bill in the first year is estimated at \$821,858. This is based on a per unit cost of \$10.17 times the average number of days (356) these offenders are projected to be under supervision during the year. Supervision terms for sex offenders tend to be longer than other types of supervision and average 7.3 years; therefore the number of days on monitoring will be significant. The table below illustrates the projected cost of electronic monitoring units for the next five (5) fiscal years.

In addition, the Department of Corrections estimates that it will incur the following expenses for additional staffing, recurring expenses, and monitoring costs:

Fiscal Year	FTE’s	Position Amount	Offenders on GPS	Monitoring Amount	Total Amount
FY 2004-05	25	\$1,046,775	227	\$821,858	\$1,868,633
FY 2005-06	-0-	\$-0-	993	\$3,595,176	\$3,595,176
FY 2006-07	1	\$59,889	2300	\$8,327,196	\$8,387,085
FY 2007-08	45	\$2,753,218	3607	\$13,059,216	\$15,812,434

FY 2008-09	89	\$5,560,409	4914	\$17,791,235	\$23,351,644
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

May require expenditures by local law enforcement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would directly impact companies which provide electronic monitoring services. General Dynamics is the only known provider of a system which could automatically gather crime incident reports from local law enforcement and provide alerts when a monitored offender was near the scene of a crime. General Dynamics estimates that the cost for the system would be \$3.7 million.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2004, the Committee on Public Safety & Crime Prevention voted to approve the bill with a committee substitute. The committee substitute incorporated an amendment which amended the bill in several ways. The amendment changed the persons who may be subject to the electronic monitoring tracking system from "all convicted sex offenders" to "all probationers and community controllees who have been court ordered to submit to electronic monitoring pursuant to s. 948.03(5)(b) or (c)." This includes only those persons court ordered to electronic monitoring who have been convicted of four of the most serious sexual offenses: sexual battery, lewd or lascivious offenses, sexual performance by child, and child porn. The amendment also changed language which permitted the monitoring of offenders "lawfully ordered" to specify that they must be "court ordered." The amendment changes the provision of the bill regarding the criteria for the Department of Corrections should the number of offenders on sex offender probation be below 1,000. The previous language stated that DOC would

monitor offenders “likely to commit sexual offenses or violent crimes.” The new language provides that DOC may monitor offenders who have been court ordered to submit to electronic monitoring if the persons have “previous convictions for sexual offenses or violent crimes.” Finally, the amendment defines “conviction” as “a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.”