

Bill No. CS for SB 1220

Barcode 832772

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Clary) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (6) is added to section 648.387, Florida Statutes, to read:

648.387 Primary bail bond agents; duties.--

(6)(a) A licensed bail bond agent may be a vendor of electronic monitoring services. A licensed bail bond agent may also subcontract for such services with a third-party vendor of the bail bond agent's choice if the licensed bail bond agent can certify that the equipment and services rendered by such third-party vendor on the bail bond agent's behalf meet the requirements of s. 907.07 for monitoring of a defendant for whom the bail bond agent has provided a criminal surety bail bond. A licensed bail bond agent is also permitted to subcontract with government entities as a means for the bond agent to provide electronic monitoring services when

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1 monitoring has been ordered by a court.

2 (b) A licensed bail bond agent may charge a
3 reasonable, nonrefundable fee for electronic monitoring
4 services to the person who is subject to electronic
5 monitoring. Failure to make timely payment of such fee
6 constitutes grounds for the agent to remand such person to the
7 court or sheriff. Fees charged by a bail bond agent associated
8 with required electronic monitoring services are not
9 considered part of the premium for bail bond and are exempt
10 from s. 648.33.

11 (c) Records and receipts for electronic monitoring
12 provided by a licensed bail bond agent shall be kept separate
13 and apart from bail bond records.

14 Section 2. Section 903.135, Florida Statutes, is
15 created to read:

16 903.135 Probation appearance bond.--As a condition of
17 any probation, community control, or any other court-ordered
18 community supervision for a violent felony or sex-related
19 offense authorized pursuant to chapter 948, the court may
20 order the posting of a surety bond to secure the appearance of
21 the defendant at any subsequent court proceeding. Such bond
22 may include as a condition thereof that the defendant be
23 placed on an electronic monitoring device and subject to
24 electronic monitoring services in a like manner and under like
25 conditions as set forth in s. 907.06. The appearance bond
26 shall be filed by a licensed bail agent with the sheriff who
27 shall provide a copy to the clerk of the court. Upon 72 hours'
28 notice by the clerk of the court, the licensed bail agent
29 shall produce the person on probation, community control, or
30 other court-ordered community supervision to the court. The
31 licensed bail agent shall surrender to the sheriff a person on

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1 probation, community control, or court-ordered community
 2 supervision upon notice by the probation officer that the
 3 person has violated the terms of probation, community control,
 4 or court-ordered community supervision. Under this section,
 5 notice shall be in writing or by electronic data transmission.
 6 If the bail agent fails to produce the defendant in the court
 7 at the time noticed by the court or the clerk of court, the
 8 bond shall be estreated and forfeited according to the
 9 procedures set forth in this chapter. Failure to appear shall
 10 be the sole grounds for forfeiture and estreatment of the
 11 appearance bond. Where not inconsistent with this subsection,
 12 this chapter and chapter 648 shall regulate the relationship
 13 between the bail agent and probationer.

14 Section 3. Section 907.06, Florida Statutes, is
 15 created to read:

16 907.06 Electronic monitoring.--

17 (1) The court may order a defendant who has been
 18 charged with a violent felony or sex-related offense or who
 19 has been charged with any crime but who has been previously
 20 convicted of a violent felony or sex-related offense to be
 21 released from custody on a surety bond subject to conditions
 22 that include, without limitation, electronic monitoring if
 23 electronic monitoring is available in the jurisdiction. This
 24 section also applies to persons subject to electronic
 25 monitoring pursuant to s. 903.135.

26 (2) A defendant required to submit to electronic
 27 monitoring shall pay a reasonable fee for equipment use and
 28 monitoring as an additional condition of pretrial release. The
 29 failure of the defendant to make timely payment of such fee
 30 constitutes a violation of pretrial release and grounds for
 31 the defendant to be remanded to the court or appropriate

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1 sheriff or law enforcement agency.

2 (3) Electronic monitoring shall include the provision
3 of services to continuously receive and monitor the electronic
4 signals from the transmitter worn by the defendant so as to be
5 capable of identifying the defendant's geographic position at
6 any time to within 9 meters using Global Positioning Satellite
7 (GPS) technology, subject to the limitations related to the
8 technology and to circumstances of force majeure. Such
9 electronic monitoring services may be undertaken as a primary
10 responsibility by a government entity, or by a licensed bail
11 bond agent who may provide both bail bond services and have
12 primary responsibility or oversight for electronic monitoring
13 services. A government entity or licensed bail bond agent may
14 subcontract to a third-party vendor for electronic monitoring
15 services if such third-party vendor complies with all
16 provisions of this subsection and s. 907.08 and operates under
17 the direction and control of the government entity or bond
18 agent with primary responsibility as the vendor for electronic
19 monitoring. A government entity that elects to subcontract for
20 electronic monitoring services is required to select such
21 third-party vendor through a competitive bidding process.

22 (4) Any person who provides electronic monitoring
23 services shall report any known violation of the defendant's
24 pretrial release conditions to the appropriate court, sheriff,
25 or law enforcement agency, state attorney, or licensed bail
26 agent, if any. Notwithstanding the foregoing requirement, the
27 provision of electronic monitoring services does not
28 constitute an undertaking to protect members of the public
29 from harm occasioned by a monitored person. The sole duty owed
30 by a person who provides electronic monitoring is to give a
31 law enforcement officer, upon request, an indication of the

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1 physical location of the monitored person at a point in time.
 2 It is unreasonable for any member of the public to expect that
 3 a provider of electronic monitoring services will provide
 4 protection against harm occasioned by a monitored person. A
 5 provider of electronic monitoring services cannot control the
 6 activities of a monitored person. A person who provides
 7 electronic monitoring is not responsible to other persons for
 8 equipment failure or for the criminal acts of a monitored
 9 person.

10 (5) A defendant who has been released in accordance
 11 with this section may not alter, tamper with, damage, or
 12 destroy any electronic monitoring equipment. A defendant who
 13 is notified of a malfunction in the equipment shall
 14 immediately cooperate with the vendor in restoring the
 15 equipment to proper functioning. A violation of this
 16 subsection constitutes a violation of pretrial release and
 17 grounds for the defendant to be remanded to the court,
 18 appropriate sheriff, or law enforcement agency.

19 Section 4. Section 907.07, Florida Statutes, is
 20 created to read:

21 907.07 Vendor requirements for provision of electronic
 22 monitoring services; vendor registration and certification
 23 process.--

24 (1) This section does not apply to electronic
 25 monitoring provided directly by the state, a county, or a
 26 sheriff.

27 (2) The chief judge of each judicial circuit shall
 28 maintain a list of all eligible vendors of electronic
 29 monitoring in the circuit. To be an eligible vendor, a person
 30 must be a licensed bail bond agent in this state who has
 31 registered in accordance with this section as a vendor capable

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1 of providing electronic monitoring services in that judicial
 2 circuit. The chief judge shall place on such list of eligible
 3 vendors any licensed bail bond agent in this state who
 4 certifies in writing, as part of the vendor registration, that
 5 all electronic monitoring equipment and electronic monitoring
 6 services shall be operated and maintained in compliance with
 7 this section and who agrees, as part of such certification, to
 8 comply with the terms of this section.

9 (3) Only government entities and licensed bail bond
 10 agents who are included on a list of eligible vendors under
 11 subsection (2) are permitted to undertake primary
 12 responsibility as a vendor of electronic monitoring services
 13 in a judicial circuit of this state.

14 (4) A licensed bail bond agent shall agree to abide by
 15 the following minimum terms as a condition of being included
 16 on the list of eligible vendors of electronic monitoring in a
 17 given judicial circuit of this state:

18 (a) The vendor shall register in writing the name of
 19 the vendor, who must be a licensed bail bond agent in this
 20 state, the name of an individual employed by the vendor who is
 21 to serve as a contact person for the vendor, the address of
 22 the vendor, and the telephone number of the contact person.

23 (b) The vendor must initially certify as part of the
 24 registration, and must certify in writing at least annually
 25 thereafter on a date set by the chief judge, that all of the
 26 electronic monitoring devices used by the vendor and any of
 27 the vendor's sub-contractors comply with the requirements for
 28 privately owned electronic monitoring devices in s. 907.08.

29 (5) A vendor shall promptly notify the chief judge of
 30 any changes in the vendor's registration information that is
 31 required under this section.

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1 (6) Failure to comply with the registration or
 2 recertification requirements of this section is grounds for
 3 removal from any chief judge's list of eligible vendors for
 4 electronic monitoring.

5 (7) The chief judge, in his or her discretion, may
 6 also remove any registered vendor from the list of eligible
 7 vendors should the vendor:

8 (a) Fail to properly monitor any person that the
 9 vendor was required to monitor.

10 (b) Charge a defendant a clearly excessive fee for use
 11 and monitoring of electronic monitoring equipment. Such fee is
 12 excessive if the fee charged on a per diem basis is at least
 13 two times greater than the average fee charged by other
 14 vendors on the eligible vendor list who provide comparable
 15 electronic monitoring equipment and services in that judicial
 16 circuit.

17 Section 5. Section 907.08, Florida Statutes, is
 18 created to read:

19 907.08 Standards for privately owned electronic
 20 monitoring devices.--A privately owned electronic monitoring
 21 device provided by a vendor must, at a minimum, meet the
 22 standards set forth in this section to be used for electronic
 23 monitoring of a person under s. 907.06 or s. 903.135. A device
 24 must:

25 (1) Be a transmitter unit that meets certification
 26 standards approved by the Federal Communications Commission.

27 (2) At the court's discretion, either:

28 (a) Emit signal content 24 hours per day, which signal
 29 identifies the specific device being worn by the defendant and
 30 the defendant's physical location using Global Positioning
 31 Satellite (GPS) technology accurate to within 9 meters; or

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1 (b) Receive signal content 24 hours per day,
2 determining the defendant's physical location using Global
3 Positioning Satellite (GPS) technology accurate to within 9
4 meters, recording the defendant's physical locations
5 throughout the day and be capable of transmitting that record
6 of locations to the vendor at least daily.

7 (3) A unit affixed to the defendant must:

8 (a) Possess an internal power source that provides a
9 minimum of 1 year of normal operation without need for
10 recharging or replacing the power source. The device must emit
11 signal content that indicates the power status of the
12 transmitter and provides the vendor with notification of
13 whether the power source needs to be recharged or replaced.

14 (b) Possess and emit signal content that indicates
15 whether the transmitter has been subjected to tampering or
16 removal.

17 (c) Possess encrypted signal content or another
18 feature designed to discourage duplication.

19 (d) Be of a design that is shock resistant, water and
20 moisture proof, and capable of reliable function under normal
21 atmospheric and environmental conditions.

22 (e) Be capable of wear and use in a manner that does
23 not pose a safety hazard or unduly restrict the activities of
24 the defendant.

25 (f) Be capable of being attached to the defendant in a
26 manner that readily reveals any efforts to tamper with or
27 remove the transmitter upon visual inspection.

28 (g) Use straps or other mechanisms for attaching the
29 transmitter to the defendant which are either capable of being
30 adjusted to fit a defendant of any size or made available in a
31 variety of sizes.

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1 Section 6. Section 907.09, Florida Statutes, is
2 created to read:

3 907.09 Offenses related to electronic monitoring
4 devices.--

5 (1) It is illegal for any person to intentionally
6 alter, tamper with, damage or destroy any electronic
7 monitoring equipment used for monitoring the location of a
8 person pursuant to court order, unless such person is the
9 owner of the equipment, or an agent of the owner performing
10 ordinary maintenance and repairs. A person who violates this
11 subsection commits a felony of the third degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084.

13 (2) It is illegal for any person to develop, build,
14 create, possess, or use any device that is intended to mimic,
15 clone, interfere with, or jam the signal of an electronic
16 monitoring device used to monitor the location of a person
17 pursuant to court order. A person who violates this subsection
18 commits a felony of the second degree, punishable as provided
19 in s. 775.082, s. 775.083, or s. 775.084.

20 Section 7. Subsection (3) is added to section 948.039,
21 Florida Statutes, to read:

22 948.039 Special terms and conditions of probation or
23 community control imposed by court order.--The court may
24 determine any special terms and conditions of probation or
25 community control. The terms and conditions should be
26 reasonably related to the circumstances of the offense
27 committed and appropriate for the offender. The court shall
28 impose the special terms and conditions by oral pronouncement
29 at sentencing and include the terms and conditions in the
30 written sentencing order. Special terms and conditions may
31 include, but are not limited to, requirements that the

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1 offender:

2 (3) Effective October 1, 2005, and applicable for
3 violent felonies and sex-related offenses committed on or
4 after that date, the court may order the posting of a
5 probation bond under s. 903.135 to secure the appearance of
6 the offender at any subsequent court proceeding. Such bond may
7 include as a condition thereof that the offender be placed on
8 an electronic monitoring device and subject to electronic
9 monitoring services in a like manner and under like
10 conditions, as provided in s. 907.06. The offender shall be
11 ordered to pay the reasonable cost of the electronic
12 monitoring service.

13 Section 8. Subsection (6) is added to section 948.11,
14 Florida Statutes, to read:

15 948.11 Electronic monitoring devices.--

16 (6) Any offender sentenced to community control or
17 probation for a violent felony or sex-related offense and
18 required to submit to electronic monitoring pursuant to
19 statute, court order, or the discretion of the Department of
20 Corrections may be referred by the department to a vendor who
21 has been selected through a competitive bidding process for
22 the provision of electronic monitoring services, subject to
23 the requirements of s. 907.07. Notwithstanding subsection (5)
24 and s. 948.09(2), such offender shall be responsible for the
25 cost of monitoring and shall pay the same directly to the
26 vendor. A vendor shall report noncompliance to the assigned
27 probation officer or community control officer pursuant to the
28 procedures applicable to the department under subsection (3).
29 If an offender fails to timely pay any cost related to
30 electronic monitoring services to the vendor, the vendor may
31 file an affidavit of nonpayment with the department and, upon

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1 receipt of the affidavit, the department shall proceed with a
2 violation of the probation or community control.

3 Section 9. This act shall take effect October 1, 2005.

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

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10 and insert:

11 A bill to be entitled
12 An act relating to electronic monitoring;
13 amending s. 648.387, F.S.; authorizing bail
14 bond agents to be vendors of electronic
15 monitoring services; authorizing bail bond
16 agents to contract with third-party vendors to
17 provide electronic monitoring of pretrial
18 releases in certain circumstances; authorizing
19 bail bond agents to contract with government
20 entities to provide electronic monitoring
21 services in certain circumstances; authorizing
22 such agents to collect a fee for electronic
23 monitoring services; providing that failure to
24 make timely payment of such fee constitutes
25 grounds to remand; providing that such fee is
26 exempt from regulation by the Department of
27 Financial Services; creating s. 903.135, F.S.;
28 authorizing issuance of a probation appearance
29 bond; authorizing electronic monitoring of a
30 person subject to a probation appearance bond;
31 providing procedures for revocation of the

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1 bond; providing application; creating s.
2 907.06, F.S.; providing for electronic
3 monitoring of persons on pretrial release;
4 requiring the monitored person to pay fees;
5 providing that provision of electronic
6 monitoring equipment and services is not an
7 undertaking; prohibiting a person being
8 monitored from tampering with monitoring
9 equipment; creating s. 907.07, F.S.; providing
10 a means by which the chief judge of each
11 circuit shall maintain a list of eligible
12 private vendors for provision of electronic
13 monitoring services; creating s. 907.08, F.S.;
14 providing standards for privately owned
15 electronic monitoring devices; creating s.
16 907.09, F.S.; providing criminal penalties for
17 tampering with electronic monitoring devices;
18 providing criminal penalties for cloning the
19 signal of an electronic monitoring device;
20 amending s. 948.039, F.S.; allowing a court to
21 require a probation appearance bond; amending
22 s. 948.11, F.S.; allowing private vendors to
23 provide electronic monitoring of offenders
24 subject to community control or probation for
25 violent felonies and sex-related offenses;
26 providing an effective date.

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