

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 1220

SPONSOR: Judiciary Committee, Criminal Justice Committee, Senator Wise and others

SUBJECT: Electronic Monitoring

DATE: April 25, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
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4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1220 amends the law that licenses bail bond agents and permits them to provide electronic monitoring services for their clients released on bail before trial. A new provision is created to allow courts to order a probation appearance bond to guarantee a defendant's appearance at future court proceedings. Electronic monitoring is permitted as a condition of that bond.

The committee substitute would require the chief judge of each circuit to develop and maintain a list of approved vendors of electronic monitoring services. Additionally, standards for electronic monitoring services have been provided and must be met for a vendor to appear on a chief judge's approved-vendor list.

Penalties are included to provide that it is a third degree felony to intentionally tamper with a monitoring device. It is a second degree felony to create a device that mimics or interferes with the electronic monitoring signal.

This committee substitute amends the following sections of the Florida Statutes: 648.387, 948.039, and 948.11. It creates the following sections of the Florida Statutes: 903.135, 907.06, 907.07, 907.08, and 907.09.

## II. Present Situation:

Florida's Constitution provides that, unless a person is charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance is entitled

to pretrial release on reasonable conditions.<sup>1</sup> If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>2</sup>

All persons detained for criminal offenses have a right to a first appearance hearing within 24 hours of arrest.<sup>3</sup> The primary function of the first appearance hearing is a determination regarding pretrial release.<sup>4</sup>

Bail is a set sum of money, paid to the sheriff prior to release, commonly used as a condition of pretrial release. A person released on bail becomes an absconder and forfeits the bail if he or she fails to appear before the court at the appointed time. As an alternative to posting bail, the person may employ the services of a bail bond agent. The bail bond agent does not pay the bail amount, but acts as a surety, promising to pay the bail amount should the defendant become an absconder. Bail bond agents are authorized to track, detain, and bring an absconder before the sheriff; a bail bond agent that returns an absconder may recover some or all of the bail. Florida licenses bail bond agents through the Department of Financial Services.

In addition to bail, courts impose any number of other conditions of pretrial release intended to ensure the defendant appears at trial and does no further harm in society. Those conditions may require the defendant to stay in, or stay away from, a particular location.

Current law already allows for persons charged with a dangerous crime to be electronically monitored when released after a pretrial hearing.<sup>5</sup> Electronic monitoring is a process whereby a person's whereabouts are tracked through use of a transmitter securely attached to the offender, and a receiver or receivers receive the signal. Early devices were used for house arrest circumstances, utilizing a simple proximity signal and a receiver in the home. Later devices use technologies such as radio frequency, cellular telephone, and GPS, to provide tracking systems that can provide location information on a 24-hour basis.

In the juvenile law setting, electronic monitoring is one of the forms of pretrial detention that can be ordered if allowed by the risk assessment instrument.<sup>6</sup> Electronic monitoring administered by the Department of Corrections is currently used for adult offenders on probation.<sup>7</sup> There is no statutory prohibition on the use of electronic monitoring for pretrial release. Pretrial release is a

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<sup>1</sup> Art. I, s. 14, Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> Rule 3.130(a), Florida Rules of Criminal Procedure.

<sup>4</sup> Rules 3.130(d) and 3.131(b), Florida Rules of Criminal Procedure.

<sup>5</sup> s. 907.041(4), F.S., defines "dangerous crime" and provides the court with discretion to release an accused on "electronic monitoring" or on recognizance bond after a pre-trial hearing if the findings on the record of facts and circumstances warrant such a release.

<sup>6</sup> See s. 985.215, F.S. The risk assessment instrument referenced in s. 985.215, F.S. is utilized at a detention hearing to determine the appropriate level of detention of a juvenile pending resolution of a pending charge. The instrument functions as a score sheet which factors in the seriousness of the current offense and a juvenile's past criminal history by assigning each a certain number of points. Juveniles scoring 0-9 points must be released to home detention, which entails supervision by the youth's parents with some restrictions ordered by the court. Juveniles scoring 9-11 points may be released on home detention with an electronic monitor. Juveniles scoring 12 points or high must be held in secure detention for 21 days (or in serious cases 30 days) until they plea or have an adjudicatory hearing, at which time the question of detention status is revisited by the court, again utilizing the Risk Assessment Instrument.

<sup>7</sup> s. 948.03, F.S.

function of local law enforcement, therefore, if a court orders electronic monitoring of a person on pretrial release, the state would not be involved.

### **III. Effect of Proposed Changes:**

Committee Substitute for Committee Substitute for Senate Bill 1220 amends the law licensing bail bond agents by creating s. 648.387, F.S., to establish that a licensed bail bond agent may also provide electronic monitoring of clients as a condition of pre-trial release, probation, or community control. The bail bond agent may charge his or her client a fee that is “reasonable” and “nonrefundable” for those services. Those fees are exempted from s. 648.33, F.S., relating to bail bond rates. If the client fails to make payment on time for the electronic monitoring services, the bondsman may take the person into custody and remand the client to the court or sheriff. Additionally, if the bail bond agent charges more than twice the amount of other comparable vendors on the approved-vendor list, the bond agent may be removed from the list.

The committee substitute requires the chief judge of each circuit to keep a list of all approved vendors who are authorized to provide electronic monitoring. The information required from each approved private vendor is set forth as well as the standards for electric monitoring devices.

Chapter 903, F.S., which governs bail, is amended to create a new section which allows a judge to order a defendant to post a probation appearance bond, securing his or her appearance at subsequent court proceedings.<sup>8</sup> One of the conditions of that bond may be electronic monitoring by a bail bond agent. Additionally, s. 907.06, F.S., is created to permit the court, as a condition of pretrial release, to order a defendant charged with a violent or sex-related offense, or one previously convicted of a violent or sex-related offense, to be subject to electronic monitoring. The committee substitute revises provisions of ch. 948, F.S., relating to probation and community control, to provide for electronic monitoring authorized by the proposed legislation.<sup>9</sup>

It is a third-degree felony to intentionally tamper with or alter the electronic monitoring devices. Additionally, it is illegal and a second-degree felony for a person to create or possess a device that is designed to interfere with the signal of an electronic monitoring device.

The committee substitute provides an effective date of October 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>8</sup> Proposed s. 903.135, F.S.

<sup>9</sup> Proposed ss. 948.039(3) and 948.11(6), F.S.

C. Trust Funds Restrictions:

None.

D. Other:

One issue which could arise in the committee substitute is whether the nonpayment of fees which would result in a violation of pretrial release would constitute an impermissible “imprisonment for debt.” Article I, s. 11 of the Florida Constitution forbids the government from imprisoning persons for nonpayment of financial obligations, unless the debtor has engaged in fraud. This provision, however, does not generally apply to criminal fines, and insofar as the fees associated with electronic monitoring may be considered a court fine or fee, it may withstand constitutional scrutiny.<sup>10</sup> In a similar vein, if the fees are viewed as an obligation for pretrial release similar to payment of a cash bond, there may not be a constitutional issue.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Bondsmen could benefit financially from the provisions of this committee substitute. Bondsmen would be able to charge a fee from the defendant for the electronic monitoring services and would also be able to contract with local governments for these services. Additionally, companies that provide the equipment and monitoring services would be able to benefit financially from the increased demand for their products and services.

C. Government Sector Impact:

The Department of Corrections anticipates that this committee substitute should have a minimal fiscal impact on their operations or prison and probation population.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

**“Reasonable” Fee**

The committee substitute provides that a bail bond agency may “collect a reasonable, nonrefundable fee for electronic monitoring services from the person who is subject to electronic monitoring.”<sup>11</sup> This committee substitute does not specify the fee, does not provide how

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<sup>10</sup> See *Turner v. State*, 168 So. 2d 192 (Fla. 3d DCA 1964).

<sup>11</sup> CS/CS/SB 1220, page 3, lines 4-5.

reasonableness is determined, and does not place any person or agency in a position to make a determination as to reasonableness should a person object to the bail bond agent's determination of a fee. In addition, the committee substitute specifically exempts the fees collected for electronic monitoring from the provisions of s. 648.33, F.S., which would require them to be approved by the Department of Financial Services in the manner required for bond premiums.<sup>12</sup> The only limitation on the amount charged for services is provided in the grounds for removal from the approved-vendor list; a vendor can be removed for charging more than twice the amount of other comparable vendors on the list.<sup>13</sup>

### **Duties/Responsibilities of Electronic Monitoring Service Provider**

The proposed language creates s. 907.06(4), F.S., which reads as follows:

(4) Any person who provides electronic monitoring services shall report any known violation of the defendant's pretrial release conditions to the appropriate court, sheriff, or law enforcement agency, state attorney, or licensed bail agent, if any. Notwithstanding the foregoing requirement, the provision of electronic monitoring services does not constitute an undertaking to protect members of the public from harm occasioned by a monitored person. The sole duty owed by a person who provides electronic monitoring is to give a law enforcement officer, upon request, an indication of the physical location of the monitored person at a point in time. It is unreasonable for any member of the public to expect that a provider of electronic monitoring services will provide protection against harm occasioned by a monitored person. A provider of electronic monitoring services cannot control the activities of a monitored person. A person who provides electronic monitoring is not responsible to other persons for equipment failure or for the criminal acts of a monitored person. (Emphasis added.)

The language seems contradictory because the subsection requires the monitoring service to report a violation of release and then states that the "sole duty" of the monitoring service is to provide "upon request, an indication of the physical location of a monitored person." In addition, the underlined text above seems somewhat out-of-place in statutory context.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>12</sup> See s. 648.26(1)(a), F.S., which provides, in part, for the Department of Financial Services to make rules related to the regulation for fees collected by bond agents. See also s. 648.33(1), F.S., which provides that bail bond rates are subject to part I, ch. 627, F.S., of the insurance code, providing for rates and rating organizations.

<sup>13</sup> See proposed s. 907.07(7)(b), F.S.



## **VIII. Summary of Amendments:**

None.

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