

By the Committees on Judiciary; Criminal Justice; and Senators Wise, Fasano and Crist

590-2252-05

1 A bill to be entitled
2 An act relating to electronic monitoring;
3 amending s. 648.387, F.S.; authorizing bail
4 bond agents to be vendors of electronic
5 monitoring services; authorizing bail bond
6 agents to contract with third-party vendors to
7 provide electronic monitoring of pretrial
8 releases in certain circumstances; authorizing
9 bail bond agents to contract with government
10 entities to provide electronic monitoring
11 services in certain circumstances; authorizing
12 such agents to collect a fee for electronic
13 monitoring services; providing that failure to
14 make timely payment of such fee constitutes
15 grounds to remand; providing that such fee is
16 exempt from regulation by the Department of
17 Financial Services; creating s. 903.135, F.S.;
18 authorizing issuance of a probation appearance
19 bond; authorizing electronic monitoring of a
20 person subject to a probation appearance bond;
21 providing procedures for revocation of the
22 bond; providing application; creating s.
23 907.06, F.S.; providing for electronic
24 monitoring of persons on pretrial release;
25 requiring the monitored person to pay fees;
26 providing that provision of electronic
27 monitoring equipment and services is not an
28 undertaking; prohibiting a person being
29 monitored from tampering with monitoring
30 equipment; creating s. 907.07, F.S.; providing
31 a means by which the chief judge of each

1 circuit shall maintain a list of eligible
2 private vendors for provision of electronic
3 monitoring services; creating s. 907.08, F.S.;
4 providing standards for privately owned
5 electronic monitoring devices; creating s.
6 907.09, F.S.; providing criminal penalties for
7 tampering with electronic monitoring devices;
8 providing criminal penalties for cloning the
9 signal of an electronic monitoring device;
10 amending s. 948.039, F.S.; allowing a court to
11 require a probation appearance bond; amending
12 s. 948.11, F.S.; allowing private vendors to
13 provide electronic monitoring of offenders
14 subject to community control or probation for
15 violent felonies and sex-related offenses;
16 providing an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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

22 648.387 Primary bail bond agents; duties.--

23 (6)(a) A licensed bail bond agent may be a vendor of
24 electronic monitoring services. A licensed bail bond agent may
25 also subcontract for such services with a third-party vendor
26 of the bail bond agent's choice if the licensed bail bond
27 agent can certify that the equipment and services rendered by
28 such third-party vendor on the bail bond agent's behalf meet
29 the requirements of s. 907.07 for monitoring of a defendant
30 for whom the bail bond agent has provided a criminal surety
31 bail bond. A licensed bail bond agent is also permitted to

1 subcontract with government entities as a means for the bond
2 agent to provide electronic monitoring services when
3 monitoring has been ordered by a court.

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

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

16 Section 2. Section 903.135, Florida Statutes, is
17 created to read:

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

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

16 Section 3. Section 907.06, Florida Statutes, is
17 created to read:

18 907.06 Electronic monitoring.--

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

28 (2) A defendant required to submit to electronic
29 monitoring shall pay a reasonable fee for equipment use and
30 monitoring as an additional condition of pretrial release. The
31 failure of the defendant to make timely payment of such fee

1 constitutes a violation of pretrial release and grounds for
2 the defendant to be remanded to the court or appropriate
3 sheriff or law enforcement agency.

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

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

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

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

21 Section 4. Section 907.07, Florida Statutes, is
22 created to read:

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

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

29 (2) The chief judge of each judicial circuit shall
30 maintain a list of all eligible vendors of electronic
31 monitoring in the circuit. To be an eligible vendor, a person

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

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

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

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

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

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

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

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

11 (a) Fail to properly monitor any person that the
12 vendor was required to monitor.

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

20 Section 5. Section 907.08, Florida Statutes, is
21 created to read:

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

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

30 (2) At the court's discretion, either:
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1 (a) Emit signal content 24 hours per day, which signal
2 identifies the specific device being worn by the defendant and
3 the defendant's physical location using Global Positioning
4 Satellite (GPS) technology accurate to within 9 meters; or

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

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

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

18 (b) Possess and emit signal content that indicates
19 whether the transmitter has been subjected to tampering or
20 removal.

21 (c) Possess encrypted signal content or another
22 feature designed to discourage duplication.

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

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

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

1 (g) Use straps or other mechanisms for attaching the
2 transmitter to the defendant which are either capable of being
3 adjusted to fit a defendant of any size or made available in a
4 variety of sizes.

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

7 907.09 Offenses related to electronic monitoring
8 devices.--

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

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

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

26 948.039 Special terms and conditions of probation or
27 community control imposed by court order.--The court may
28 determine any special terms and conditions of probation or
29 community control. The terms and conditions should be
30 reasonably related to the circumstances of the offense
31 committed and appropriate for the offender. The court shall

1 impose the special terms and conditions by oral pronouncement
2 at sentencing and include the terms and conditions in the
3 written sentencing order. Special terms and conditions may
4 include, but are not limited to, requirements that the
5 offender:

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

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

19 948.11 Electronic monitoring devices.--

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

1 procedures applicable to the department under subsection (3).
2 If an offender fails to timely pay any cost related to
3 electronic monitoring services to the vendor, the vendor may
4 file an affidavit of nonpayment with the department and, upon
5 receipt of the affidavit, the department shall proceed with a
6 violation of the probation or community control.

7 Section 9. This act shall take effect October 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/Senate Bill 1220

4 The committee substitute makes the following changes to the
5 underlying committee substitute:

- 6 -- Provides for bail bond agents to certify that the
7 equipment and services rendered by a third-party
8 electronic monitoring vendor with whom the bond agent
9 subcontracts meet statutory requirements;
- 10 -- Requires bail bond agents to separately maintain receipts
11 for electronic monitoring services;
- 12 -- Clarifies references to violent and sex-related
13 offenders;
- 14 -- Provides for written notice to a bail bond agent to
15 require the agent to surrender an electronically
16 monitored person for a violation of probation;
- 17 -- Revises Global Positioning Satellite (GPS) technology
18 requirements so that a person's location must be
19 pinpointed to within 9 meters instead of within 3 meters
20 of the monitored person's actual location;
- 21 -- Requires a governmental entity that contracts with a
22 third-party vendor for electronic monitoring services to
23 utilize the competitive bidding process;
- 24 -- Substitutes the word "or" for "and" with reference to
25 notification requirements for electronic monitoring
26 providers when a person violates pretrial release
27 conditions so that the court, sheriff, law enforcement,
28 state attorney, or licensed bail bond agent are to be
29 notified, as opposed to notifying all enumerated parties;
- 30 -- Provides language relating what is and is not a duty or
31 responsibility of the electronic monitoring service
provider;
- Provides requirements for a vendor of electronic
monitoring services;"
- Restricts eligibility for primary responsibility for
electronic monitoring services to government entities and
licensed bail bond agents, removing private investigators
from list of eligible vendors;
- Provides that charging a fee more than twice the amount
of other vendors' fees on the list of approved vendors is
grounds for removal from the approved-vendor list;
- Authorizes requirement of electronic monitoring as a
condition of probation bond or community control;
- Makes technical changes throughout.