

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to electronic monitoring; amending s.
7 648.387, F.S.; authorizing bail bond agents to be vendors
8 of electronic monitoring services; authorizing bail bond
9 agents to contract with vendors to provide electronic
10 monitoring of pretrial releasees in certain circumstances;
11 authorizing bail bond agents to contract with government
12 entities to provide electronic monitoring services in
13 certain circumstances; authorizing such agents to collect
14 a fee for electronic monitoring services; providing that
15 failure to make timely payment of fees constitutes grounds
16 to remand; providing that such fees are exempt from
17 regulation by the Department of Financial Services;
18 creating s. 903.135, F.S.; authorizing issuance of a
19 probation appearance bond; authorizing electronic
20 monitoring of a person subject to a probation appearance
21 bond; providing procedures for forfeiture and estreatment
22 of the bond; providing application; creating s. 907.06,
23 F.S.; providing for electronic monitoring of persons on

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24 pretrial release; requiring the monitored person to pay
 25 fees; prohibiting a person being monitored from tampering
 26 with monitoring equipment; creating s. 907.07, F.S.;
 27 providing for creation of a list of approved vendors for
 28 provision of electronic monitoring services by the chief
 29 judge of each circuit; providing eligibility and other
 30 requirements; providing grounds for removal from the list;
 31 creating s. 907.08, F.S.; providing standards for
 32 privately owned electronic monitoring devices; creating s.
 33 907.09, F.S.; providing criminal penalties for tampering
 34 with electronic monitoring devices; providing criminal
 35 penalties for cloning or interfering with the signal of an
 36 electronic monitoring device; amending s. 948.039, F.S.;
 37 allowing a court to require a probation appearance bond;
 38 requiring the offender to pay the cost of monitoring;
 39 amending s. 948.11, F.S.; allowing private vendors to
 40 provide electronic monitoring of offenders subject to
 41 community control or probation; requiring the offender to
 42 pay the cost of monitoring; providing an effective date.

43

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

45

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

48 648.387 Primary bail bond agents; duties.--

49 (6)(a) A bail bond agent may be a vendor of electronic
 50 monitoring services. A bail bond agent may also contract with a
 51 vendor of the bail bond agent's choice from among those vendors

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52 approved under s. 907.07 for monitoring of a defendant for whom
 53 the agent has provided a criminal surety bail bond. A bail bond
 54 agent may additionally contract with government entities to
 55 provide electronic monitoring services when monitoring has been
 56 ordered by a court.

57 (b) A bail bond agent may charge a reasonable,
 58 nonrefundable fee for electronic monitoring services from the
 59 person who is subject to electronic monitoring. Failure to make
 60 timely payment of such fees constitutes grounds for the agent to
 61 remand such person to the court or sheriff. Fees charged by a
 62 bail bond agent associated with required electronic monitoring
 63 services are not considered part of the premium for a bail bond
 64 and shall be exempt from the provisions of s. 648.33.

65 Section 2. Section 903.135, Florida Statutes, is created
 66 to read:

67 903.135 Probation appearance bond.--As a condition of any
 68 probation, community control, or any other court-ordered
 69 community supervision authorized under chapter 948, the court
 70 may order the posting of a bond to secure the appearance of the
 71 defendant at any subsequent court proceeding. Such bond may
 72 include as a condition thereof that the defendant be placed on
 73 an electronic monitoring device in a like manner and under like
 74 conditions as in s. 907.06. The appearance bond shall be filed
 75 by a bail bond agent with the sheriff who shall provide a copy
 76 to the clerk of the court. Upon 72 hours' notice by the clerk of
 77 the court, the bail bond agent shall produce the person on
 78 probation, community control, or other court-ordered community
 79 supervision to the court. The bail bond agent shall surrender to

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80 | the sheriff a person on probation, community control, or court-
 81 | ordered community supervision upon notice by the probation
 82 | officer that the person has violated the terms of probation,
 83 | community control, or court-ordered community supervision. If
 84 | the bail bond agent fails to produce the defendant in the court
 85 | at the time noticed by the court or the clerk of the court, the
 86 | bond shall be estreated and forfeited according to the
 87 | procedures set forth in this chapter. Failure to appear shall be
 88 | the sole grounds for forfeiture and estreatment of the appearance
 89 | bond. Where not inconsistent with this section, this chapter
 90 | shall regulate the relationship between the bail bond agent and
 91 | probationer.

92 | Section 3. Section 907.06, Florida Statutes, is created to
 93 | read:

94 | 907.06 Electronic monitoring.--

95 | (1) As a condition of pretrial release, and regardless of
 96 | whether the court requires bail as a condition of pretrial
 97 | release, the court may order a defendant charged with a violent
 98 | or sex-related offense, or who has previously been convicted of
 99 | a violent or sex-related offense, to be subject to electronic
 100 | monitoring, if electronic monitoring is available in the
 101 | jurisdiction. This section also applies to persons subject to
 102 | electronic monitoring under s. 903.135.

103 | (2) A defendant required to submit to electronic
 104 | monitoring shall pay a reasonable fee for equipment use and
 105 | monitoring as an additional condition of pretrial release. The
 106 | failure of the defendant to make timely payment of such fees
 107 | constitutes a violation of pretrial release and grounds for the

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108 defendant to be remanded to the court or appropriate sheriff.

109 (3) The court ordering electronic monitoring shall appoint
 110 a person to continuously receive and monitor the electronic
 111 signals from the transmitter worn by the defendant so as to be
 112 capable of identifying the defendant's geographic position at
 113 any time using Global Positioning Satellite (GPS) technology,
 114 subject to the limitations related to the technology and to
 115 circumstances of force majeure. The appointed person may be a
 116 government entity or a vendor as provided in s. 907.07. A bail
 117 bond agent may provide both bail bond services and electronic
 118 monitoring services.

119 (4) Any person who provides electronic monitoring services
 120 shall report forthwith any known violation of the defendant's
 121 pretrial release conditions to the appropriate court, sheriff,
 122 state attorney, and bail bond agent, if any.

123 (5) A defendant who has been released in accordance with
 124 the provisions of this section shall not alter, tamper with,
 125 damage, or destroy any electronic monitoring equipment. A
 126 defendant who is notified of a malfunction in the equipment
 127 shall immediately cooperate with the vendor in restoring the
 128 equipment to proper functioning. A violation of this subsection
 129 constitutes a violation of pretrial release and grounds for the
 130 defendant to be remanded to the court or the appropriate
 131 sheriff.

132 Section 4. Section 907.07, Florida Statutes, is created to
 133 read:

134 907.07 Approved vendors for provision of electronic
 135 monitoring services; approved equipment.--

136 (1) This section shall not apply to electronic monitoring
 137 provided by the state, a county, or a sheriff.

138 (2) The chief judge of each circuit shall develop and
 139 maintain a list of all vendors who are authorized to provide
 140 electronic monitoring services for courts in the circuit. The
 141 chief judge shall place any person who is eligible as a vendor,
 142 and who agrees to comply with the terms of this section, onto
 143 the list of approved vendors.

144 (3) The following persons are eligible for inclusion on
 145 the list of approved vendors:

146 (a) A bail bond agency holding an active and current
 147 license under chapter 648.

148 (b) A private investigative agency holding a current and
 149 active license under chapter 493.

150 (c) A person who is approved by the chief judge of any
 151 circuit of the state and who is determined to be reliable and
 152 trustworthy and has never been convicted of a felony or crime of
 153 moral turpitude.

154 (d) A person approved as a vendor of electronic monitoring
 155 services by a court of competent jurisdiction in another state
 156 and who has not been previously disqualified as a vendor in any
 157 state or court.

158 (4) A vendor must agree to abide by the following minimum
 159 requirements before inclusion on the list of approved vendors:

160 (a) The vendor shall provide the clerk with the name of
 161 the vendor, the name of an individual employed by the vendor who
 162 shall serve as a contact person for the vendor, the address of
 163 the vendor, and the telephone number of the contact person.

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164 (b) The vendor must initially certify, and must certify at
 165 least annually thereafter on a date set by the chief judge, that
 166 all of the vendor's electronic monitoring devices comply with
 167 the requirements for privately owned electronic monitoring
 168 devices in s. 907.08.

169 (5) A vendor shall promptly notify the chief judge of any
 170 changes in the vendor's address, ownership, or qualifications to
 171 be a vendor.

172 (6) The chief judge, in his or her discretion, may remove
 173 any vendor from the list of approved vendors should the vendor:

174 (a) Fail to comply with the registration or
 175 recertification requirements of this section.

176 (b) Fail to properly monitor any person that the vendor
 177 was required to monitor.

178 (c) Charge a defendant a clearly excessive fee for use and
 179 monitoring of electronic monitoring equipment.

180 Section 5. Section 907.08, Florida Statutes, is created to
 181 read:

182 907.08 Standards for privately owned electronic monitoring
 183 devices.--A privately owned electronic monitoring device
 184 provided by a vendor must, at a minimum, meet the standards set
 185 forth in this section. A device must:

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

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

189 (a) Emit signal content 24 hours per day, which signal
 190 identifies the specific device being worn by the defendant and
 191 the defendant's physical location using Global Positioning

192 Satellite (GPS) technology accurate to within 3 meters; or
 193 (b) Receive signal content 24 hours per day, determining
 194 the defendant's physical location using Global Positioning
 195 Satellite (GPS) technology accurate to within 3 meters,
 196 recording the defendant's physical locations throughout the day,
 197 and be capable of transmitting that record of locations to the
 198 vendor at least daily.

199 (3) When affixed to the defendant, must possess an
 200 internal power source that provides a minimum of 1 year of
 201 normal operation without need for recharging or replacing the
 202 power source. The device must emit signal content that indicates
 203 the power status of the transmitter and provides the vendor with
 204 notification of whether the power source needs to be recharged
 205 or replaced.

206 (4) Possess and emit signal content that indicates whether
 207 the transmitter has been subjected to tampering or removal.

208 (5) Possess encrypted signal content or another feature
 209 designed to discourage duplication.

210 (6) Be of a design that is shock resistant, water and
 211 moisture proof, and capable of reliable function under normal
 212 atmospheric and environmental conditions.

213 (7) Be capable of wear and use in a manner that does not
 214 pose a safety hazard or unduly restrict the activities of the
 215 defendant.

216 (8) Be capable of being attached to the defendant in a
 217 manner that readily reveals any efforts to tamper with or remove
 218 the transmitter upon visual inspection.

219 (9) Use straps or other mechanisms for attaching the

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220 transmitter to the defendant that are either capable of being
 221 adjusted to fit a defendant of any size or made available in a
 222 variety of sizes.

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

225 907.09 Offenses related to electronic monitoring
 226 devices.--

227 (1) It is illegal for any person to intentionally alter,
 228 tamper with, damage, or destroy any electronic monitoring
 229 equipment used for monitoring the location of a person pursuant
 230 to court order, unless such person is the owner of the
 231 equipment, or an agent of the owner performing ordinary
 232 maintenance and repairs. A person who violates this subsection
 233 commits a felony of the third degree, punishable as provided in
 234 s. 775.082, s. 775.083, or s. 775.084.

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

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

244 948.039 Special terms and conditions of probation or
 245 community control imposed by court order.--The court may
 246 determine any special terms and conditions of probation or
 247 community control. The terms and conditions should be reasonably

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248 related to the circumstances of the offense committed and
 249 appropriate for the offender. The court shall impose the special
 250 terms and conditions by oral pronouncement at sentencing and
 251 include the terms and conditions in the written sentencing
 252 order. Special terms and conditions may include, but are not
 253 limited to, requirements that the offender:

254 (3) Effective October 1, 2005, and applicable for offenses
 255 committed on or after that date, the court may order the posting
 256 of a probation appearance bond under s. 903.135 to secure the
 257 appearance of the offender at any subsequent court proceeding.
 258 Such bond may include as a condition thereof that the offender
 259 be placed on an electronic monitoring device in the manner and
 260 conditions provided in s. 907.06. The offender shall be ordered
 261 to pay the reasonable cost of the electronic monitoring service.

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

264 948.11 Electronic monitoring devices.--

265 (6) Any offender sentenced to community control or
 266 probation and required to submit to electronic monitoring
 267 pursuant to statute, court order, or the discretion of the
 268 Department of Corrections may be referred by the Department of
 269 Corrections to a vendor for the provision of electronic
 270 monitoring services. Notwithstanding subsection (5) and s.
 271 948.09(2), such offender shall be responsible for the cost of
 272 monitoring and shall pay the same directly to the vendor. A
 273 vendor shall report noncompliance to the assigned probation
 274 officer or community control officer pursuant to the procedures
 275 applicable to the Department of Corrections under subsection

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276 | (3). If an offender fails to timely pay any cost related to
277 | electronic monitoring services to the vendor, the vendor may
278 | file an affidavit of nonpayment with the Department of
279 | Corrections and, upon receipt of the affidavit, the department
280 | shall proceed with a violation of the probation or community
281 | control.

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