

CHAMBER ACTION

1 The Justice Council 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 third-party vendors to provide
10 electronic monitoring of pretrial releasees in certain
11 circumstances; authorizing bail bond agents to contract
12 with government entities to provide electronic monitoring
13 services in certain circumstances; authorizing such agents
14 to collect a fee for electronic monitoring services;
15 providing that failure to make timely payment of fees
16 constitutes grounds to remand; providing that such fees
17 are exempt from regulation by the Department of Financial
18 Services; creating s. 903.135, F.S.; authorizing issuance
19 of a probation appearance bond for certain offenders;
20 authorizing electronic monitoring of a person subject to a
21 probation appearance bond; providing procedures for
22 revocation of the bond; providing application; creating s.
23 907.06, F.S.; providing for electronic monitoring of

24 persons on pretrial release; requiring the monitored
 25 person to pay fees; providing that provision of electronic
 26 monitoring equipment and services is not an undertaking;
 27 prohibiting a person being monitored from tampering with
 28 monitoring equipment; creating s. 907.07, F.S.; providing
 29 a means by which the chief judge of each circuit shall
 30 maintain a list of eligible private vendors for provision
 31 of electronic monitoring services; creating s. 907.08,
 32 F.S.; providing standards for privately owned electronic
 33 monitoring devices; creating s. 907.09, F.S.; providing
 34 criminal penalties for tampering with electronic
 35 monitoring devices; providing criminal penalties for
 36 cloning the signal of an electronic monitoring device;
 37 amending s. 948.039, F.S.; allowing a court to require a
 38 probation appearance bond; amending s. 948.11, F.S.;
 39 allowing private vendors to provide electronic monitoring
 40 of offenders subject to community control or probation for
 41 violent felonies and sex-related offenses; providing an
 42 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 licensed bail bond agent may be a vendor of
 50 electronic monitoring services. A licensed bail bond agent may
 51 also subcontract for such services with a third-party vendor of

52 the bail bond agent's choice provided the licensed bail bond
 53 agent can certify that the equipment and services rendered by
 54 such third-party vendor on the bail bond agent's behalf meet the
 55 requirements of s. 907.07 for monitoring of a defendant for whom
 56 the bail bond agent has provided a criminal surety bail bond. A
 57 licensed bail bond agent shall also be permitted to subcontract
 58 with government entities as a means for the bond agent to
 59 provide electronic monitoring services when monitoring has been
 60 ordered by a court.

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

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

72 Section 2. Section 903.135, Florida Statutes, is created
 73 to read:

74 903.135 Probation appearance bond.--As a condition of any
 75 probation, community control, or any other court-ordered
 76 community supervision for a violent felony or sex-related
 77 offense authorized pursuant to chapter 948, the court may order
 78 the posting of a surety bond to secure the appearance of the
 79 defendant at any subsequent court proceeding. Such bond may

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80 include as a condition thereof that the defendant be placed on
 81 an electronic monitoring device and subject to electronic
 82 monitoring services, in a like manner and under like conditions
 83 as set forth in s. 907.06. The appearance bond shall be filed by
 84 a licensed bail agent with the sheriff who shall provide a copy
 85 to the clerk of the court. Upon 72 hours' notice by the clerk of
 86 court, the licensed bail agent shall produce the person on
 87 probation, community control, or other court-ordered community
 88 supervision to the court. The licensed bail agent shall
 89 surrender to the sheriff a person on probation, community
 90 control, or court-ordered community supervision upon notice by
 91 the probation officer that the person has violated the terms of
 92 probation, community control, or court-ordered community
 93 supervision. Under this section, notice shall be in writing or
 94 by electronic data transmission. If the licensed bail agent
 95 fails to produce the defendant in the court at the time noticed
 96 by the court or the clerk of court, the bond shall be estreated
 97 and forfeited according to the procedures set forth in this
 98 chapter. Failure to appear shall be the sole grounds for
 99 forfeiture and estreatment of the appearance bond. Where not
 100 inconsistent with this section, this chapter and chapter 648
 101 shall regulate the relationship between the bail agent and
 102 probationer.

103 Section 3. Section 907.06, Florida Statutes, is created to
 104 read:

105 907.06 Electronic monitoring.--

106 (1) The court may order a defendant who has been charged
 107 with a violent felony or sex-related offense, or who has been

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108 charged with any crime but who has been previously convicted of
109 a violent felony or sex-related offense, to be released from
110 custody on a surety bond subject to conditions that include,
111 without limitation, electronic monitoring, if electronic
112 monitoring is available in the jurisdiction. This section also
113 applies to persons subject to electronic monitoring pursuant to
114 s. 903.135.

115 (2) A defendant required to submit to electronic
116 monitoring shall pay a reasonable fee for equipment use and
117 monitoring as an additional condition of pretrial release. The
118 failure of the defendant to make timely payment of such fees
119 constitutes a violation of pretrial release and grounds for the
120 defendant to be remanded to the court or appropriate sheriff or
121 law enforcement agency.

122 (3) Electronic monitoring shall include the provision of
123 services to continuously receive and monitor the electronic
124 signals from the transmitter worn by the defendant so as to be
125 capable of identifying the defendant's geographic position at
126 any time to within 9 meters using Global Positioning Satellite
127 (GPS) technology, subject to the limitations related to the
128 technology and to circumstances of force majeure. Such
129 electronic monitoring services may be undertaken as a primary
130 responsibility by a government entity or by a licensed bail bond
131 agent who may provide both bail bond services and have primary
132 responsibility or oversight for electronic monitoring services.
133 A government entity or licensed bail bond agent may subcontract
134 to a third-party vendor for electronic monitoring services
135 provided such third-party vendor complies with all provisions of

136 this subsection and s. 907.08, and operates under the direction
 137 and control of the government entity or bond agent with primary
 138 responsibility as the vendor for electronic monitoring. A
 139 government entity that elects to subcontract for electronic
 140 monitoring services shall be required to select such third-party
 141 vendor through a competitive bidding process.

142 (4) Any person who provides electronic monitoring services
 143 shall report forthwith any known violation of the defendant's
 144 pretrial release conditions to the appropriate court, sheriff or
 145 law enforcement agency, state attorney, and licensed bail agent,
 146 if any. Notwithstanding the foregoing requirement, the provision
 147 of electronic monitoring services shall not be deemed to
 148 constitute an undertaking to protect members of the public from
 149 harm occasioned by a monitored person. The sole duty owed by a
 150 person who provides electronic monitoring is to give a law
 151 enforcement officer, upon request, an indication of the physical
 152 location of the monitored person at any point in time. It is
 153 unreasonable for any member of the public to expect that a
 154 provider of electronic monitoring services will provide
 155 protection against harm occasioned by a monitored person. A
 156 provider of electronic monitoring services cannot control the
 157 activities of a monitored person. A person who provides
 158 electronic monitoring is not responsible to other persons for
 159 equipment failure or for the criminal acts of a monitored
 160 person.

161 (5) A defendant who has been released in accordance with
 162 the provisions of this section shall not alter, tamper with,
 163 damage, or destroy any electronic monitoring equipment. A

164 defendant who is notified of a malfunction in the equipment
 165 shall immediately cooperate with the vendor in restoring the
 166 equipment to proper functioning. A violation of this subsection
 167 constitutes a violation of pretrial release and grounds for the
 168 defendant to be remanded to the court or appropriate sheriff or
 169 law enforcement agency.

170 Section 4. Section 907.07, Florida Statutes, is created to
 171 read:

172 907.07 Vendor requirements for provision of electronic
 173 monitoring services; vendor registration and certification
 174 process.--

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

177 (2) The chief judge of each judicial circuit shall
 178 maintain a list of all eligible vendors of electronic monitoring
 179 in the circuit. To be an eligible vendor, a person must be a
 180 licensed bail bond agent in this state who has registered in
 181 accordance with this section as a vendor capable of providing
 182 electronic monitoring services in that judicial circuit. The
 183 chief judge shall place on such list of eligible vendors any
 184 licensed bail bond agent in this state who certifies in writing,
 185 as part of the vendor registration, that all electronic
 186 monitoring equipment and electronic monitoring services shall be
 187 operated and maintained in compliance with this section, and who
 188 agrees as part of such certification to comply with the terms of
 189 this section.

190 (3) Only a governmental entity or a licensed bail bond
 191 agent who is included on a list of eligible vendors under

192 subsection (2) shall be permitted to undertake primary
 193 responsibility as a vendor of electronic monitoring services in
 194 a judicial circuit of this state.

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

199 (a) The vendor shall register in writing the name of the
 200 vendor who shall be a licensed bail bond agent in this state,
 201 the name of an individual employed by the vendor who is to serve
 202 as a contact person for the vendor, the address of the vendor,
 203 and the telephone number of the contact person.

204 (b) The vendor must initially certify as part of the
 205 registration, and must certify in writing at least annually
 206 thereafter on a date set by the chief judge, that all of the
 207 electronic monitoring devices used by the vendor and any of the
 208 vendor's subcontractors comply with the requirements for
 209 privately owned electronic monitoring devices in s. 907.08.

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

213 (6) Failure to comply with the registration or
 214 recertification requirements of this section shall be grounds
 215 for removal from any chief judge's list of eligible vendors for
 216 electronic monitoring.

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

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220 (a) Fail to properly monitor any person that the vendor
221 was required to monitor.

222 (b) Charge a defendant a clearly excessive fee for use and
223 monitoring of electronic monitoring equipment. Such fees shall
224 be considered clearly excessive if the fees charged on a per
225 diem basis are at least two times greater than the average fee
226 charged by other vendors on the eligible vendor list who provide
227 comparable electronic monitoring equipment and services in that
228 judicial circuit.

229 Section 5. Section 907.08, Florida Statutes, is created to
230 read:

231 907.08 Standards for privately owned electronic monitoring
232 devices.--A privately owned electronic monitoring device
233 provided by a vendor must, at a minimum, meet the standards set
234 forth in this section to be used for electronic monitoring of a
235 person under s. 907.06 or s. 903.135. A device must:

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

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

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

243 (b) Receive signal content 24 hours per day, determining
244 the defendant's physical location using Global Positioning
245 Satellite (GPS) technology accurate to within 9 meters,
246 recording the defendant's physical locations throughout the day,
247 and capable of transmitting that record of locations to the

248 vendor at least daily.

249 (3) A unit affixed to the defendant must possess an
 250 internal power source that provides a minimum of 1 year of
 251 normal operation without need for recharging or replacing the
 252 power source. The device must emit signal content that indicates
 253 the power status of the transmitter and provides the vendor with
 254 notification of whether the power source needs to be recharged
 255 or replaced.

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

258 (5) Possess encrypted signal content or another feature
 259 designed to discourage duplication.

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

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

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

269 (9) Use straps or other mechanisms for attaching the
 270 transmitter to the defendant that are either capable of being
 271 adjusted to fit a defendant of any size or made available in a
 272 variety of sizes.

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

275 907.09 Offenses related to electronic monitoring

276 devices.--

277 (1) It is illegal for any person to intentionally alter,
 278 tamper with, damage, or destroy any electronic monitoring
 279 equipment used for monitoring the location of a person pursuant
 280 to court order, unless such person is the owner of the
 281 equipment, or an agent of the owner performing ordinary
 282 maintenance and repairs. A person who violates this subsection
 283 commits a felony of the third degree, punishable as provided in
 284 s. 775.082, s. 775.083, or s. 775.084.

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

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

294 948.039 Special terms and conditions of probation or
 295 community control imposed by court order.--The court may
 296 determine any special terms and conditions of probation or
 297 community control. The terms and conditions should be reasonably
 298 related to the circumstances of the offense committed and
 299 appropriate for the offender. The court shall impose the special
 300 terms and conditions by oral pronouncement at sentencing and
 301 include the terms and conditions in the written sentencing
 302 order. Special terms and conditions may include, but are not
 303 limited to, requirements that the offender:

304 (3) Effective October 1, 2005, and applicable for violent
 305 felonies and sex-related offenses committed on or after that
 306 date, the court may order the posting of a probation bond
 307 pursuant to s. 903.135 to secure the appearance of the offender
 308 at any subsequent court proceeding. Such bond may include as a
 309 condition thereof that the offender be placed on an electronic
 310 monitoring device and subject to electronic monitoring services,
 311 in a like manner and under like conditions as in s. 907.06. The
 312 offender shall be ordered to pay the reasonable cost of the
 313 electronic monitoring service.

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

316 948.11 Electronic monitoring devices.--

317 (6) Any offender sentenced to community control or
 318 probation for a violent felony or sex-related offense, and
 319 required to submit to electronic monitoring pursuant to statute,
 320 court order, or the discretion of the Department of Corrections
 321 may be referred by the department to a vendor who has been
 322 selected through a competitive bidding process for the provision
 323 of electronic monitoring services, subject to the requirements
 324 of s. 907.07. Notwithstanding subsection (5) and s. 948.09(2),
 325 such offender shall be responsible for the cost of monitoring
 326 and shall pay the same directly to the vendor. A vendor shall
 327 report noncompliance to the assigned probation officer or
 328 community control officer pursuant to the procedures applicable
 329 to the Department of Corrections under subsection (3). If an
 330 offender fails to timely pay any cost related to electronic
 331 monitoring services to the vendor, the vendor may file an

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332 | affidavit of nonpayment with the department and, upon receipt of
333 | the affidavit, the department shall proceed with a violation of
334 | the probation or community control.

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