

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.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 450

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: Electronic Monitoring

DATE: March 16, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Fav/CS
2.	_____	_____	BI	_____
3.	_____	_____	JU	_____
4.	_____	_____	JA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The CS/SB 450 amends the law that licenses bail bond agents and permits them to provide electronic monitoring services for their clients released on bail before trial.

The bill requires the chief judge of each circuit to develop and maintain a list of approved vendors of electronic monitoring services. A vendor's electronic monitoring equipment must meet specific standards to allow the vendor to appear on the chief judge's approved list of vendors.

Penalties are included to provide that it is a third degree felony to intentionally tamper with a monitoring device. It is also a third degree felony to create a device that mimics or interferes with the electronic monitoring signal. Similarly, it is a third degree felony to intentionally damage stored or transmitted data produced by electronic monitoring equipment.

The Departments of Corrections and Juvenile Justice are "authorized and encouraged" to electronically monitor inmates and juveniles in their facilities. Specifications for that monitoring equipment's capabilities are set forth. Third degree penalties are established for intentionally damaging the equipment, jamming the signal, or destroying its stored data.

This bill amends sections 648.387, Florida Statutes, and creates sections 907.06, 907.07, 907.08, 907.09, 944.161 and 985.4047, Florida Statutes.

II. Present Situation:

The Florida Constitution provides that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions unless the

person is charged with a capital offence or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. However, the accused may be detained if no conditions of release can reasonably protect the community from risk of physical harm, assure the presence of the accused at trial, or assure the integrity of the judicial process.¹

All people who are detained for criminal offenses have a right to a first appearance hearing within 24 hours of arrest. The purpose of the hearing is to inform the defendant of the charge and determine the conditions of pretrial release.² A judge may impose any number of conditions of pretrial release that are designed to insure that the defendant will appear at trial.

Bail, a condition of pretrial release, requires the accused to pay a set amount of money to the sheriff prior to being released. If the accused who is released on bail does not appear before the court when required, the bail is forfeited. As an alternative to posting bail, the accused may employ a bail bond agent to act for him or her. The bail bond agent does not actually pay the bail amount but acts as a surety promising to pay the bail amount if the defendant fails to appear before the court at the appointed time. If the defendant absconds, the bail bond agent is authorized to locate, detain, and bring the defendant before the sheriff. The bail bond agent may then recover some or all of the bail. In Florida, bail bond agents are licensed through the Department of Financial Services.

Chapter 648, F.S., regulates bail bond agents and their duties and establishes their responsibilities and relationship to the Department of Financial Services. There is no language in that chapter or other statutes specifically authorizing bail bond agents to provide electronic monitoring services to persons on pretrial release.

The statutes currently permit a person who has been charged with a dangerous crime to be electronically monitored when released after a pretrial hearing.³ Electronic monitoring is the process by which an offender is tracked through a transmitter attached to him or her and a receiver which receives the signal. Monitoring devices use the technology of radio frequencies, cellular phones, and GPS to provide tracking systems that can provide location information on a constant 24 hour basis.

Electronic monitoring is currently used by the Department of Corrections to track adult offenders on probation. In the juvenile system electronic monitoring is one of the forms of pretrial detention that can be ordered if allowed by the risk assessment instrument.⁴ However, pre-trial release is a function of local law enforcement and if the court orders electronic monitoring on a defendant on pretrial release, the state would not be involved.

III. Effect of Proposed Changes:

Section 1- Electronic Monitoring by Bail Bond Agents

This bill amends the law licensing bail bond agents by creating s. 648.387(6)(a), F.S., to establish that a licensed bail bond agent may also provide electronic monitoring services. The

¹ Art. I, s. 14, Fla. Const.

² Rules 3.130(a), 3.130(d), and 3.131(b), Florida Rules of Criminal Procedure.

³ s. 907.041(4), F.S.

⁴ s. 985.215, F.S.

bail bond agent may also subcontract electronic monitoring services with a third-party vendor if the agent can certify that the vendor complies with the legal requirements for electronic monitoring. The bail bond agent may also register with a governmental entity to provide electronic monitoring services when those services have been ordered by a court.

The bill provides that the bail bond agent may charge his or her client a “nonrefundable” fee that is “reasonable” for those services. 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. The records and receipts for the monitoring services must be kept separate from bail bond records. Fees charged by the bail bond agent for electronic monitoring are not part of the bail bond premium and are exempt from regulation by the Department of Financial Services.

Section 2 – Electronic Monitoring

Section 907.06, F.S., is created to provide that the court may order electronic monitoring as a condition of pretrial release on bond for a defendant charged with a forcible felony or sex-related offense, or for a defendant who has been charged with any crime and has previously been convicted of a forcible or sex-related offense. The defendant must pay the cost of monitoring as a condition of pre-trial release. Failure to pay in a timely manner is a violation of pre-trial release and is grounds to be remanded to the court, or appropriate law enforcement authority.

Section 907.06(3), F.S., is created to establish the criteria for electronic monitoring equipment. The service is required to be continuous monitoring utilizing Global Position Satellite technology. The technology must be able to locate the defendant’s position to within 15 meters. The monitoring may be done by a governmental entity or licensed bail bond agent related to an undertaking to provide bail. Either the government or a bail bond agent may employ a vendor to provide the monitoring but either group must retain primary responsibility for monitoring. If the governmental entity uses a vendor, it must select that vendor through the competitive bidding process.

Section 907.06(4), F.S., states that whoever provides electronic monitoring services must report any known violations by the defendant to the court or specified authority or licensed bail agent. The section clarifies for purposes of liability for bail bond agents that supplying electronic monitoring services does not constitute an undertaking of responsibility for protecting the public from harm done by the monitored person. It further states that the sole duty is to provide law enforcement with the location of the defendant at any given time and disclaims responsibility for any equipment failure or harm done by the monitored defendant.

Section 907.06(5), F.S., states that a defendant must not damage or tamper with the electronic monitoring equipment or stored data and must cooperate with the vendor when notified that the equipment is malfunctioning. A violation of this subsection is a violation of pretrial release and is grounds for remanding the defendant to custody.

Section 3 – Vendor Requirements and Registration

These provisions do not apply to electronic monitoring provided by a governmental entity. The bill does require the chief judge of each circuit to maintain a list of eligible electronic monitoring vendors in the circuit and then defines what an eligible vendor is. For a bail bond agent to be a licensed vendor, he or she must register as a vendor capable of providing electronic monitoring

either as a primary provider or through a subcontractor. Only a governmental entity or a licensed bail bond agent on the list may be a vendor. The agent must agree to provide in writing the vendor's name, its contact person, and address and phone number of the contact person. The vendor must certify initially and then annually that all of the equipment complies with the provisions of s. 907.08, F.S. A judge may remove a vendor who no longer meets the requirements of this section, who fails to properly monitor a person, or who has charged a "clearly excessive" fee. A clearly excessive fee is defined as a fee that, on a per diem basis, is at least twice the average fee charged by other vendors on the list in that judicial circuit.

Section 4 – Standards for Privately Owned Electronic Monitoring Devices

This section establishes the minimum standards that privately owned electronic monitoring devices must meet.

Such equipment must:

- Be a transmitter unit that meets the certification standards approved by the Federal Communications Commission.
- At the court's discretion, be able to emit signal content 24 hours per day, identifying the device being worn by the offender and the offender's physical location to within 9 meters using Global Positioning Technology; or must receive signal content 24 hours per day, determining the offender's physical location using GPS technology accurate to within 9 meters, recording the offender's physical locations throughout the day, and capable of transmitting that record of locations to the vendor at least daily.
- If affixed to the defendant, possess an internal power source that provides a minimum of 1 year of operation without the need to recharge or replace the power source. The device must emit signal that indicates the power status of the transmitter and provides the vendor with notice of whether the power source needs recharging or replacing.
- Possess and emit signal content that reveals whether the transmitter has been tampered with or removed.
- Possess encrypted signal content or a similar feature that discourages duplication.
- Be shock resistant, waterproof, and reliable under normal conditions.
- Be worn in a manner that does not pose a safety hazard to the defendant or unduly restrict his or her activities.
- Upon visual inspection reveals effort to tamper or remove the transmitter.
- Be adjustable to fit any defendant or made available in a variety of sizes.

Section 5 - Penalties

Section 907.09, F.S., is created to provide that it is a third degree felony to intentionally tamper with or alter the electronic monitoring devices. Additionally, it is illegal and a third degree felony for a person to create or possess a device that is designed to interfere with or jam the signal of an electronic monitoring device. It is also a third degree felony to intentionally damage stored or transmitted data provided by electronic monitoring equipment.

Sections 6 and 7 – Electronic Monitoring of Inmates in Correctional Facilities and Juvenile Offenders in Juvenile Facilities

The Department of Corrections is “authorized and encouraged” to electronically monitor inmates, employees, and some visitors in state and private correctional facilities. Similarly, the Department of Juvenile Justice is “authorized and encouraged” to electronically monitor juveniles in its custody who are incarcerated within state and private juvenile facilities.

Any electronic monitoring system used in the above facilities must be capable of continuously receiving and monitoring electronic signals from a transmitter worn by an inmate or juvenile offender so as to monitor the inmate or juvenile offender in real time and identify their location within the facility at any time. Transmitters must update in at least 5-second intervals and monitor offenders to within a 10-foot radius of his or her actual location indoors or to within a radius that is equal to the width of a facility’s average size sleeping quarters, whichever is less. Transmitters may also be worn by employees, employees of private-sector companies contracted to operate facilities, and certain visitors to facilities. Transmitters must include a panic safety button, update in 5-second intervals, and be able to locate a person within a facility to within 10-feet of their actual location. Any electronic monitoring system employed must also have the following capabilities:

- Be compatible with a commercially recognized wireless network access standard as designated by the utilizing department and have sufficient bandwidth to support additional wireless networking devices;
- Be capable of issuing an alarm to an internal monitoring station within 3 seconds after receiving a panic alert from an employee or visitor transmitter or within 3 seconds after violation of the established parameters for permissible movement of inmates or juvenile offenders, employees, and visitors within the facility;
- Be capable of maintaining an historical storage capacity sufficient to store up to 6 months of complete inmate/juvenile offender, employee, and visitor tracking for purposes of follow-up investigations and vendor contract auditing. The system must be capable of recording for such purposes the continuous uninterrupted movement of all monitored individuals, including those in close proximity to any selected individual, by specific position, not by area or zone. Such historical information must also be capable of being archived by means of electronic data transfer to an acceptable permanent storage medium. In addition, data collected from each facility each day shall be electronically transmitted to an offsite central clearinghouse designated by the department where the data shall be maintained in a secure storage location in a permanent storage medium designated as acceptable by the department as a supplemental backup in order to protect the archived data from alteration and to prevent loss due to disaster or other cause;
- With respect to a unit affixed to an inmate or juvenile offender, be capable of possessing an internal power source that is field rechargeable or that provides a minimum of 1 year of normal operation without need for recharging or replacing the power source. Batteries used in units must be replaceable by facility employees. The device must emit signal content that indicates the power status of the transmitter and provides the facility monitoring station with notification of whether the power source needs to be recharged or replaced;
- Possess and emit signal content that indicates whether the transmitter has been subjected to tampering or removal;

- Possess encrypted signal content or another feature designed to discourage duplication;
- Be of a design that is shock resistant, waterproof, and capable of reliable function under normal atmospheric and environmental conditions;
- Be capable of wear and use in a manner that does not pose a safety hazard or unduly restrict the activities of the inmate or juvenile offender;
- Be capable of being attached to the inmate or juvenile offender in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection;
- Either possess straps or other means for attaching the transmitter to the inmate or juvenile offender which are capable of being adjusted to fit an inmate or juvenile offender of any size or must be made available in a variety of sizes;
- Be designed and constructed in such a way as to resist tampering with or removal by the inmate or juvenile offender; and
- Provide a backup power source in the event of a power failure.

The bill further provides that it is a third degree felony for any person to:

- Intentionally alter, tamper with, damage, or destroy electronic monitoring equipment used to monitor a person in a correctional or juvenile facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;
- Develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor a person in a correctional or juvenile facility;
- Intentionally alter, tamper with, damage, or destroy specific data stored by any electronic monitoring equipment used to monitor a person in a correctional or juvenile facility unless done so with written permission from an authorized department official or in compliance with a data-retention policy of the department adopted by rule.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

One issue which could arise in the bill 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.⁵ 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:

Sections 6 and 7 “authorize and encourage” the Department of Corrections and the Department of Juvenile Justice to employ electronic monitoring of people within their custody. Since this legislation does not mandate that this equipment be purchased or used, it would not appear to have a fiscal impact at this time.

B. Private Sector Impact:

Bondsmen could benefit financially from the provisions of this bill. 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.

Section 907.07(3), F.S., provides that only a governmental entity or licensed bail bond agent who is on the list of vendors under subsection (2) may be a vendor of electronic monitoring services in a circuit. What would then become of existing businesses that currently provide electronic monitoring services who are not bail bond agents?

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

“Reasonable” Fee

Proposed s. 648.387(6)(a), F.S., states that bail bond agents may charge a “reasonable” fee for their services. That provision does not define what constitutes “reasonable.” Proposed s. 907.07(7)(b), F.S., provides that an agent who charges a “clearly excessive fee” may be removed from the list of eligible vendors and states that a fee is clearly excessive if the fee charged on a per diem basis is at least twice the average fee charged by other vendors on the list

⁵ See *Turner v. State*, 168 So. 2d 192 (Fla. 3d DCA 1964)

in the judicial circuit. The proposed legislation is silent as to how the private rate must compare with the rate charged by a governmental entity providing those services.

No Regulating Oversight

Proposed s. 648.387(6)(b), F.S., specifically exempts the fees collected for electronic monitoring from the provisions of s. 648.33, F.S. Under ch. 648, F.S., the Department of Financial Services regulates the fees that bail bond agents may charge and requires the agents to file their fees and premiums with the department. It appears from this legislation that no agency is authorized to regulate the bail bond agents in their electronic monitoring endeavors. For example, who determines if fees are not fair or equipment is not working properly?

Duties and Responsibilities of Electronic Monitoring Service

The inclusion of language in s. 907.06(4)(b), F.S., which insulates the bail bond agent from responsibility for the acts committed by the monitored person or equipment failure appears somewhat unusual and perhaps out of place in this context.

Non-payment or Late Payment for Services

Some counties with electronic monitoring services consider the non-payment or late payment for monitoring equipment a minor issue that does not require that the defendant be returned to jail. This bill states that the failure to make timely payments constitutes grounds for the defendant to be remanded to the court or sheriff. ss. 648.387(6)(b) and 907.06(2), F.S.

Inclusion of Specifications in Statute

Sections 2, 6, and 7 establish the standards which electronic monitoring devices must meet. It would seem to create a burden on the Legislature to amend this language each time the standards change or technology advances.

Competitive Bidding Process

Proposed s. 907.06(3), F.S., states that a government entity that subcontracts for electronic monitoring services “shall” select that vendor through a competitive bidding process. Several counties which provide electronic monitoring services currently contract with the vendor which provides services to the state Department of Corrections. This proposed language may require these counties to enter into the competitive bidding process.

VIII. Summary of Amendments:

None.

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