

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 CS Electronic Monitoring
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Judiciary Committee		Hogge	Hogge
3) Justice Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents meeting the standards necessary to provide electronic monitoring services. The bill also imposes standards for the electronic monitoring devices. These include, but are not limited to, meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new felony offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility.

This bill could have a significant negative fiscal impact.

This bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes licensed bail bond agents to provide electronic monitoring services for certain pretrial releasees; authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring in their respective institutions and to adopt rules relating thereto.

Promote Personal Responsibility → This bill creates new felony offenses related to tampering, misusing, or mimicking electronic monitoring equipment or the recorded data contained in the equipment.

Maintain Public Security → This bill authorizes electronic monitoring of certain pretrial releasees, inmates and juvenile offenders within their respective institutions, and employees and visitors of correctional and juvenile justice facilities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Pretrial Release / Bail Bond Agents

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ 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.²

Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.³ Bail bond agents do not pay the bail amount, but instead act as a surety, promising to pay the bail amount if the defendant absconds. If the defendant absconds, bail bond agents are authorized to locate, detain, and bring the defendant before the sheriff. Florida bail bond agents are licensed through the Department of Financial Services.

Electronic Monitoring

Electronic monitoring is a process whereby a person's whereabouts are tracked through the use of a transmitter securely attached to the person, and a receiver that receives the transmitter's signal. Currently, electronic monitoring may be imposed as a condition of pretrial release.⁴

¹ The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(a), Fla. R. Crim. Proc.

² Rule 3.131(a), Fla. R. Crim. Proc.

³ s. 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

⁴ s. 907.041(4), F.S.

Currently, Florida statutes do not specifically authorize or preclude any entity from providing electronic monitoring services. Such services are currently provided by private companies that contract with the involved agency (Department of Corrections, Department of Juvenile Justice, counties). At this time, neither DOC nor DJJ utilize electronic monitoring systems in their respective institutions.

Florida statutes do not currently provide manufacturing standards for electronic monitoring equipment.

Effect of Proposed Changes

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. If provided through a third party vendor, the bail bond agent retains primary responsibility for the monitoring. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.⁵ The bill requires bail bond agents to keep electronic monitoring records and receipts separate from bail bond records.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant. Those providing electronic monitoring services must report known violations by the defendant to the appropriate authority.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents that annually certify that their electronic monitoring equipment meets certain specified standards. These include meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant. The chief judge may remove a registered vendor from the list if the vendor fails to properly monitor persons or if the vendor charges an excessive fee for monitoring services. The bill provides that a fee is clearly excessive if the fee charged on a per diem basis is at least twice the average charged by other vendors on the list.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new third degree felony⁶ offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility, as follows:

- intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment used to monitor a person in a DOC/DJJ facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;

⁵ s. 948.33, F.S., provides that Florida bail bond agents may not execute a bail bond without charging a premium therefore. Currently, the premium rate for state bonds may not exceed 10%. <http://www.fldfs.com>.

⁶ A third degree felony is punishable by imprisonment for up to 5 years and a fine of up to \$5,000. ss. 775.082, 775.083, F.S.

- developing, building, creating, possessing, or using 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 DOC/DJJ facility;
- intentionally altering, tampering with, damaging, or destroying specific data stored by any electronic monitoring equipment used to monitor a person in a DOC/DJJ 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.

These newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code. Thus, the third degree felonies will default to a Level 1 offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 648.387, F.S., relating to the provision of electronic monitoring services by licensed bail bond agents.

Section 2. Creates s. 907.06, F.S., providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; authorizing bail bond agents and governmental entities to provide electronic monitoring services; authorizing bail bond agents and governmental entities to subcontract to third-party vendors for electronic monitoring services in certain circumstances; requiring the entity providing electronic monitoring services to report a monitored defendant's violations of pretrial release; providing that the provision of electronic monitoring services is not an undertaking to protect the public from harm; prohibiting a monitored person from tampering with the monitoring equipment.

Section 3. Creates s. 907.07, F.S., requiring the chief judge of each circuit to maintain a list of eligible electronic monitoring vendors; requiring eligible electronic monitoring vendors to register and certify electronic monitoring equipment; providing grounds for removal from the list.

Section 4. Creates s. 907.08, F.S., providing standards for privately owned electronic monitoring devices.

Section 5. Creates s. 907.09, F.S., providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device.

Section 6. Creates s. 944.161, F.S., providing for electronic monitoring of inmates within correctional facilities; requiring electronic monitoring of certain employees and visitors to correctional facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Corrections to adopt rules.

Section 7. Creates s. 985.4047, F.S., providing for electronic monitoring of juveniles within juvenile facilities; requiring electronic monitoring of certain employees and visitors to juvenile facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Juvenile Justice to adopt rules.

Section 8. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Juvenile Justice

Were it required, the estimated cost of using technology meeting the specifications outlined in the bill for monitoring within DJJ facilities would be as follows:

Total Non-Recurring Costs: \$3,060,000

Total Recurring Costs: \$3,022,521

Residential Facilities – 144

Non-Recurring Total = \$2,592,000

Servers required: 144 programs x \$15,000 (cost of server) = \$2,160,000

Antennae required: 144 programs x \$3,000 (cost of antennae sensors) = \$432,000

Recurring Total = \$2,187,258

Number of staff: 5,500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$1,100,000

Number of youth: 6,534 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$543,629

Number of visitors: 6,534 beds x 2 (weekly visitors) x 52 weeks x \$.80 (ID cost) = \$543,629

Detention Facilities - 26

Non-Recurring Total = \$468,000

Servers required: 26 programs x \$15,000 (cost of server) = \$390,000

Antennae required: 26 programs x \$3,000 (cost of antennae) = \$78,000

Recurring Total = \$835,236

Number of staff: 2500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$500,000

Number of youth: 2,057 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$171,143

Visitors: 17,093 (monthly visitors) x 12 months x \$.80 = \$164,093

Department of Corrections

The DOC states it would be a significant financial burden on their budget if they were required to use electronic monitoring systems in prisons. For example, according to the DOC, should the DOC be required to use an electronic monitoring system at each of their institutions, this would represent a cost of approximately \$31,000,000 (86,000 inmates x \$1 x 365 days). The cost of monitoring employees (approximately 20,000) and visitors would be in addition to this figure. The DOC states that the cost of implementing and using such a system would be at the expense of repair, replacement, and enhancement of existing facilities. For example, critical security infrastructure at several institutions could be replaced and/or enhanced for the cost of implementing an electronic monitoring system at one institution. The DOC cites little potential for staff savings should electronic monitoring systems be implemented. Ultimately, the DOC states that the cost effectiveness relative to the department's priorities does not justify the significant resource investment involved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The DJJ states that counties pay for the cost of pre-adjudicatory detention and, thus, fund approximately 82 percent of the DJJ total detention budget. The numbers below reflect approximately 82 percent of the state detention costs outlined above.

\$384,000 – Non-recurring costs for the purchasing of startup equipment in detention centers.

\$700,000 – Recurring costs for operating the system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed bail bond agents who meet the requirements specified in the bill will benefit in that they will be permitted to provide electronic monitoring services for certain pretrial releasees and offenders. Additionally, companies who meet the requirements specified in the bill may benefit in that they would be eligible to provide electronic monitoring services for correctional and juvenile justice facilities.

The number of vendors with electronic monitors capable of meeting the specifications provided in the bill is uncertain.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Departments of Corrections and Juvenile Justice to implement the bill's provisions (lines 396-398 and lines 519-521). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed provisions of the bill relating to post-release offenders;

- Defined the terms “violent felony offense” and “sex-related offense;”
- Corrected grammatical and technical errors; and
- Eliminated the term “Radio Frequency Identification Technology” from the bill.