

By Senator Wise

5-66A-06

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 releasees under certain circumstances;
9 authorizing bail bond agents to register with a
10 government entity to provide electronic
11 monitoring services in certain circumstances;
12 authorizing agents to collect a fee for
13 electronic monitoring services; providing that
14 failure to make timely payment of fees
15 constitutes grounds to remand; providing that
16 fees collected are exempt from regulation by
17 the Department of Financial Services; creating
18 s. 903.135, F.S.; authorizing issuance of a
19 probation appearance bond for certain
20 offenders; authorizing electronic monitoring of
21 a person subject to a probation appearance
22 bond; providing procedures for revocation of
23 the bond; providing application; creating s.
24 907.06, F.S.; providing for electronic
25 monitoring of persons on pretrial release;
26 requiring the monitored person to pay fees;
27 providing that provision of electronic
28 monitoring equipment and services is not an
29 undertaking; prohibiting a person being
30 monitored from tampering with monitoring
31 equipment; creating s. 907.07, F.S.; providing

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

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Subsection (6) is added to section 648.387,
25 Florida Statutes, to read:

26 648.387 Primary bail bond agents; duties.--

27 (6)(a) A licensed bail bond agent may be a vendor of
28 electronic monitoring services. A licensed bail bond agent may
29 also subcontract for services with a third-party vendor of the
30 bail bond agent's choice if the licensed bail bond agent can
31 certify that the equipment and services rendered by the

1 third-party vendor on the bail bond agent's behalf meet the
2 requirements of s. 907.07 for monitoring of a defendant for
3 whom the bail bond agent has provided a criminal surety bail
4 bond. A defendant may contract with a bail agent other than
5 the bail agent who provided the surety bond to provide the
6 electronic monitoring. A licensed bail bond agent may
7 additionally register with a government entity to provide
8 electronic monitoring services when monitoring has been
9 ordered by a court if the electronic monitoring devices meet
10 the requirements of s. 907.07.

11 (b) A licensed bail bond agent may charge a
12 reasonable, nonrefundable fee for electronic monitoring
13 services from the person who is subject to electronic
14 monitoring. Failure to make timely payment of the fee
15 constitutes grounds for the agent to remand the person to the
16 court or sheriff. Fees charged by a bail bond agent associated
17 with required electronic monitoring services are not
18 considered part of the bail bond premium and are exempt from
19 s. 648.33.

20 (c) Records and receipts for electronic monitoring
21 provided by a licensed bail bond agent must be kept separate
22 and apart from bail bond records.

23 Section 2. Section 903.135, Florida Statutes, is
24 created to read:

25 903.135 Probation appearance bond.--As a condition of
26 any probation, community control, or any other court-ordered
27 community supervision for a violent felony or sex-related
28 offense authorized under chapter 948, the court may order the
29 posting of a surety bond to secure the appearance of the
30 defendant at any subsequent court proceeding. The bond may
31 include as a condition thereof that the defendant be placed on

1 an electronic monitoring device and be subject to electronic
2 monitoring services, in the manner and under the conditions
3 set forth in s. 907.06. The appearance bond must be filed by a
4 licensed bail agent with the sheriff who shall provide a copy
5 to the clerk of the court. Upon 72 hours' notice by the clerk
6 of court, the licensed bail agent shall produce the person on
7 probation, community control, or other court-ordered community
8 supervision to the court. A licensed bail agent shall
9 surrender to the sheriff a person on probation, community
10 control, or court-ordered community supervision upon notice by
11 the probation officer that the person has violated the terms
12 of probation, community control, or court-ordered community
13 supervision. Under this section, notice must be in writing or
14 by electronic data transmission. If the licensed bail agent
15 fails to produce the defendant in the court at the time and
16 place noticed by the court or the clerk of court, the bond
17 shall be estreated and forfeited according to the procedures
18 set forth in this chapter. Failure to appear shall be the sole
19 grounds for forfeiture and estreatment of the appearance bond.
20 All remedies for relief and remission set forth in this
21 chapter shall apply. If not inconsistent with this section,
22 this chapter and chapter 648 shall govern the relationship
23 between the bail agent and probationer.

24 Section 3. Section 907.06, Florida Statutes, is
25 created to read:

26 907.06 Electronic monitoring.--

27 (1) The court may order a defendant who has been
28 charged with a violent felony or sex-related offense, or who
29 has been charged with any crime but who has been previously
30 convicted of a violent felony or sex-related offense, to be
31 released from custody on a surety bond subject to conditions

1 that may include all types of electronic monitoring, if
2 electronic monitoring is available in the circuit. This
3 section also applies to persons subject to electronic
4 monitoring under s. 903.135.

5 (2) A defendant required to submit to electronic
6 monitoring shall pay a reasonable fee for equipment use and
7 monitoring as a condition of pretrial release. The failure of
8 the defendant to make timely payment of the fee constitutes a
9 violation of pretrial release and is grounds for the defendant
10 to be remanded to the court or appropriate sheriff or law
11 enforcement agency.

12 (3) Electronic monitoring includes services to
13 continuously receive and monitor the electronic signals from
14 the transmitter worn by the defendant so as to be capable of
15 identifying the defendant's geographic position at any time to
16 within 15 meters using Global Positioning Satellite (GPS)
17 technology, subject to the limitations relating to the
18 technology and to circumstances of force majeure. The
19 electronic monitoring services may be undertaken as a primary
20 responsibility by a government entity or by a licensed bail
21 bond agent who may provide bail bond services and have primary
22 responsibility or oversight for electronic monitoring
23 services. A government entity or licensed bail bond agent may
24 subcontract to a third-party vendor for electronic monitoring
25 services if the third-party vendor complies with this
26 subsection and s. 907.08 and operates under the direction and
27 control of the government entity or bond agent with primary
28 responsibility as the vendor for electronic monitoring. A
29 government entity that elects to subcontract for electronic
30 monitoring services shall select such third-party vendor
31 through a competitive bidding process.

1 (4) A provider of electronic monitoring services shall
2 report forthwith any known violation of the defendant's
3 pretrial release conditions to the appropriate court, sheriff
4 or law enforcement agency, state attorney, and licensed bail
5 agent, if any, within 1 hour. Notwithstanding the foregoing
6 requirement, the provision of electronic monitoring services
7 does not constitute an undertaking to protect members of the
8 public from harm occasioned by a monitored person. The sole
9 duty owed by a provider of electronic monitoring services is
10 to give a law enforcement officer, upon request, the physical
11 location of the monitored person at any point in time. It is
12 unreasonable for a member of the public to expect a provider
13 of electronic monitoring services to provide protection
14 against harm occasioned by a monitored person. A provider of
15 electronic monitoring services cannot control the activities
16 of a monitored person. A provider of electronic monitoring
17 services is not responsible to other persons for equipment
18 failure or for the criminal acts of a monitored person.

19 (5) A defendant who has been released in accordance
20 with this section may not alter, tamper with, damage, or
21 destroy any electronic monitoring equipment. A defendant who
22 is notified of a malfunction in the equipment shall
23 immediately cooperate with the vendor to restore the equipment
24 to proper functioning. A violation of this subsection
25 constitutes a violation of pretrial release and grounds for
26 the defendant to be remanded to the court or appropriate
27 sheriff or law enforcement agency.

28 Section 4. Section 907.07, Florida Statutes, is
29 created to read:

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1 907.07 Vendor requirements for provision of electronic
2 monitoring services; vendor registration and certification
3 process.--

4 (1) This section does not apply to electronic
5 monitoring provided directly by the state, a county, or a
6 sheriff.

7 (2) The chief judge of each judicial circuit shall
8 maintain a list of all eligible vendors of electronic
9 monitoring in the circuit. To be an eligible vendor, a person
10 must be a licensed bail bond agent in that county who has
11 registered in accordance with this section as a vendor capable
12 of providing electronic monitoring services in that judicial
13 circuit. The chief judge shall place on the list of eligible
14 vendors any licensed bail bond agent in that county who
15 certifies in writing, as part of the vendor registration, that
16 all electronic monitoring equipment and electronic monitoring
17 services shall be operated and maintained in compliance with
18 this section, and who agrees as part of the certification to
19 comply with the terms of this section.

20 (3) Each vendor must register with the court
21 administrator of the judicial circuit and pay an annual fee of
22 \$300. The court administrator shall provide a list of
23 qualified vendors to the chief judge of the judicial circuit.

24 (4) Only a governmental entity or a licensed bail bond
25 agent who is included on a list of eligible vendors under
26 subsection (2) may undertake primary responsibility as a
27 vendor of electronic monitoring services in a judicial circuit
28 of this state.

29 (5) A licensed bail bond agent must agree to abide by
30 the following minimum terms as a condition of being included
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1 on the list of eligible vendors of electronic monitoring in a
2 judicial circuit of this state:

3 (a) The vendor must register in writing the name of
4 the vendor who must be a licensed bail bond agent in this
5 state, the name of an individual employed by the vendor who is
6 to serve as a contact person for the vendor, the address of
7 the vendor, and the telephone number of the contact person.

8 (b) The vendor must initially certify as part of the
9 registration, and must certify in writing at least annually
10 thereafter on a date set by the chief judge, that all of the
11 electronic monitoring devices used by the vendor and any of
12 the vendor's subcontractors comply with the requirements for
13 privately owned electronic monitoring devices in s. 907.08.

14 (6) A vendor shall promptly notify the chief judge in
15 writing of any changes in the vendor's registration
16 information that is required under this section.

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

21 (8) The chief judge may also remove any registered
22 vendor from the list of eligible vendors if the vendor:

23 (a) Fails to properly monitor any person whom the
24 vendor was required to monitor.

25 (b) Charges a defendant a clearly excessive fee for
26 use and monitoring of electronic monitoring equipment. Fees
27 are clearly excessive if the fees charged on a per diem basis
28 are at least two times greater than the average fee charged by
29 other vendors on the eligible vendor list who provide
30 comparable electronic monitoring equipment and services in
31 that judicial circuit.

1 Section 5. Section 907.08, Florida Statutes, is
2 created to read:

3 907.08 Standards for privately owned electronic
4 monitoring devices.--A privately owned electronic monitoring
5 device provided by a vendor must, at a minimum, meet the
6 standards set forth in this section to be used for electronic
7 monitoring of a person under s. 907.06 or s. 903.135. A device
8 must:

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

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

12 (a) Emit signal content 24 hours per day, which signal
13 identifies the specific device being worn by the defendant and
14 the defendant's physical location using Global Positioning
15 Satellite (GPS) technology accurate to within 15 meters; or

16 (b) Receive signal content 24 hours per day,
17 determining the defendant's physical location using Global
18 Positioning Satellite (GPS) technology accurate to within 15
19 meters, recording the defendant's physical locations
20 throughout the day, and capable of transmitting that record of
21 locations to the vendor at least daily.

22 (3) If the unit is affixed to the defendant, possess
23 an internal power source that provides a minimum of 1 year of
24 normal operation without need for recharging or replacing the
25 power source. The device must emit signal content that
26 indicates the power status of the transmitter and provides the
27 vendor with notification of whether the power source needs to
28 be recharged or replaced.

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

1 (5) Possess encrypted signal content or another
2 feature designed to discourage duplication.

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

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

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

12 (9) Use straps or other mechanisms for attaching the
13 transmitter to the defendant which are capable of being
14 adjusted to fit a defendant of any size or made available in a
15 variety of sizes.

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

18 907.09 Offenses related to electronic monitoring
19 devices.--

20 (1) A person may not intentionally alter, tamper with,
21 damage, or destroy any electronic monitoring equipment used to
22 monitor the location of a person under court order, unless the
23 person is the owner of the equipment or an agent of the owner
24 performing ordinary maintenance and repairs. A person who
25 violates this subsection commits a felony of the third degree,
26 punishable as provided in s. 775.082, s. 775.083, or s.
27 775.084.

28 (2) A person may not develop, build, create, possess,
29 or use any device that is intended to mimic, clone, interfere
30 with, or jam the signal of an electronic monitoring device
31 used to monitor the location of a person under court order. A

1 person who violates this subsection commits a felony of the
2 third degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

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

6 948.039 Special terms and conditions of probation or
7 community control imposed by court order.--The court may
8 determine any special terms and conditions of probation or
9 community control. The terms and conditions should be
10 reasonably related to the circumstances of the offense
11 committed and appropriate for the offender. The court shall
12 impose the special terms and conditions by oral pronouncement
13 at sentencing and include the terms and conditions in the
14 written sentencing order. Special terms and conditions may
15 include, but are not limited to, requirements that the
16 offender:

17 (3) Effective October 1, 2006, and applicable for
18 violent felonies and sex-related offenses committed on or
19 after that date, the court may order the posting of a
20 probation bond under s. 903.135 to secure the appearance of
21 the offender at any subsequent court proceeding. The bond may
22 include as a condition thereof that the offender be placed on
23 an electronic monitoring device and subject to electronic
24 monitoring services, in a like manner and under like
25 conditions as in s. 907.06. The offender shall be ordered to
26 pay the reasonable cost of the electronic monitoring service.

27 Section 8. Subsection (8) is added to section 948.11,
28 Florida Statutes, to read:

29 948.11 Electronic monitoring devices.--

30 (8) Any offender sentenced to community control or
31 probation for a violent felony or sex-related offense, and

1 required to submit to electronic monitoring under statute,
2 court order, or the discretion of the Department of
3 Corrections may be referred by the department to a vendor who
4 has been selected through a competitive bidding process to
5 provide electronic monitoring services, subject to the
6 requirements of s. 907.07. Notwithstanding subsection (5) and
7 s. 948.09(2), the offender is responsible for the cost of
8 monitoring and shall pay the costs directly to the vendor. A
9 vendor shall report noncompliance to the assigned probation
10 officer or community control officer under the procedures
11 applicable to the Department of Corrections under subsection
12 (3). If an offender fails to timely pay any cost related to
13 electronic monitoring services to the vendor, the vendor may
14 file an affidavit of nonpayment with the department and, upon
15 receipt of the affidavit, the department shall proceed with a
16 violation of the probation or community control.

17 Section 9. This act shall take effect October 1, 2006.
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SENATE SUMMARY

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3 Authorizes bail bond agents to be vendors of electronic
4 monitoring services, to contract with third-party vendors
5 to provide electronic monitoring of pretrial releasees,
6 to register with a government entity to provide
7 electronic monitoring services, and to collect a fee for
8 electronic monitoring services. Provides that failure to
9 make timely payment of fees constitutes grounds to
10 remand. Authorizes issuing a probation appearance bond
11 for certain offenders. Provides for electronic monitoring
12 of a person subject to a probation appearance bond.
13 Provides procedures to revoke a bond. Provides for
14 electronic monitoring of persons on pretrial release.
15 Requires the person monitored to pay fees. Prohibits a
16 person being monitored from tampering with monitoring
17 equipment. Requires the chief judge of each circuit to
18 maintain a list of eligible private vendors to provide
19 electronic monitoring services. Requires each vendor to
20 register with the court administrator of the judicial
21 circuit and to pay an annual fee. Provides standards for
22 privately owned electronic monitoring devices. Provides
23 criminal penalties for tampering with electronic
24 monitoring devices. Permits a court to require a
25 probation appearance bond. Allows private vendors to
26 provide electronic monitoring of offenders subject to
27 community control or probation for violent felonies and
28 sex-related offenses.
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