

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.)

BILL: SB 2018

SPONSOR: Senator Haridopolos

SUBJECT: Electronic Monitoring

DATE: February 26, 2004 REVISED: 03/03/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 948.03, F.S., to require that a sentencing court impose electronic monitoring as a condition of probation or community control for any offender placed on such supervision for committing sexual battery, or any sexual offense against a child, on or after July 1, 2004.

The bill also amends s. 948.11, F.S., to require that the electronic monitoring system used by the Department of Corrections have certain features, including real time or delayed reporting of the offender's location with alerts when the offender is in a prohibited area or leaves a place where he or she is required to remain. The system must also be integrated with reports of crime locations and provide a report to law enforcement if the offender was in the vicinity of a reported crime. The system is to monitor a minimum of 1000 offenders, including all sexual offenders who may lawfully be required to submit to electronic monitoring.

The bill provides an appropriation of \$7.8 million to the Department of Corrections for purposes of contracting for the system, which is to be fully operational by December 1, 2004.

This bill substantially amends sections 948.03 and 948.11 of the Florida Statutes.

II. Present Situation:

The Department of Corrections is responsible for supervising criminal offenders who are placed on community supervision. Electronic monitoring is a tool that is sometimes used in addition to traditional methods of supervision for offenders who are placed on probation or community control. The department conducted a statistical analysis of the offenders placed on community control during fiscal year 2000-2001. The analysis revealed that community controllees on

electronic monitoring were 55.7 percent less likely to reoffend during the 2-year period following placement on monitoring than offenders who were not electronically monitored.

Methods of Electronic Monitoring and Number of Offenders Monitored

The department currently uses three methods of electronic monitoring, all requiring the offender to wear an electronic device on his or her body:

1. Radio frequency (RF) monitoring is essentially a curfew check that records whether an offender on house arrest is in the home. The probation officer receives a daily report, and can investigate any disclosure that the offender was not at home when required. RF monitoring does not provide any information about the offender’s location when outside of the home. The equipment cost for RF monitoring is approximately \$2.75 per day.
2. Passive Global Position System (GPS) monitoring uses different technology that also provides a daily report to the probation officer. Unlike RF monitoring, a passive GPS system does disclose the offender’s movements outside the home. In addition to recording that the offender left home, this system will pinpoint the offender’s location during the day. This system can also detect and record that an offender entered an area from which he or she is legally excluded, such as when a sex offender goes within 1000 feet of a school. The information is only reported once a day. The equipment cost is \$4 per day. However, the department has determined that passive GPS monitoring is the most labor-intensive method of electronic monitoring and requires a greatly reduced caseload for the probation officer.
3. Active GPS monitoring uses the same basic technology as passive GPS monitoring, but provides near real-time reporting of the offender’s location. The system is designed to provide an alert to the probation officer when the offender either leaves an area to which he or she is restricted or enters an area from which he or she is barred. The equipment cost is \$9.17 to \$10.17 per day.

The department or its contractor maintains an archive of the GPS data points (locations) of offenders on either type of GPS monitoring. Therefore, a law enforcement agency can request a search of the database to determine whether a monitored offender was in the area when a crime was committed.

The following table reflects the number of probationers and community controllees on electronic monitoring as of December 31, 2003:

Device Type	Sex Offenders	Others	Total
Radio Frequency	45	163	208
Passive GPS	10	140	150
Active GPS	206	221	427
Total	261	524	785

In November 2003, the department received a technology grant from the United States Department of Justice for a pilot study of a system that combines GPS monitoring technology with data collection of crime incident reports from local law enforcement agencies. The pilot

project covers 96 law enforcement agencies in 8 counties. The major difference between the current electronic monitoring process and the pilot system is that the pilot includes a process for automatically extracting the crime information from the law enforcement agency's computer database, and automatically reporting when there is correlation between an offender's location and the time and location of a reported crime. The pilot uses *Crimetrax*, a proprietary system owned by General Dynamics.

Statutory Authority for Electronic Monitoring

Section 948.03(5), F.S., requires that a sentencing court impose certain conditions of probation or community control for offenders who are placed on sex offender probation for violating ch. 794, F.S. (sexual battery), s. 800.04, F.S. (lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071, F.S. (sexual performance by a child), or s. 847.0145, F.S. (selling or buying of minors). Paragraph (a) of the subsection includes conditions for all such offenders whose offense date is on or after October 1, 1995. Paragraph (b) of the subsection includes additional requirements that apply only to such offenders who are placed on sex offender probation and whose offense date was on or after October 1, 1997. Paragraph (b) includes a provision for requiring electronic monitoring, but it is not a true statutory mandate because: (1) it only applies when the court places the offender on sex-offender probation, which is not done in all eligible cases; and (2) it may only be ordered "when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections." s. 948.03(5)(b)5, F.S.

Section 948.03(2)(a), F.S., provides that a court may order electronic monitoring as a condition of community control. Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring without a court order. However, the department does not exercise this discretion because of case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

The only statutory mandate for a court to require electronic monitoring is found in s. 948.03(2)(b), F.S., and applies only to offenders who are placed on criminal quarantine community for criminal transmission of HIV. There are currently no offenders on this form of community supervision.

In addition to the above, the sentencing court may place any offender on electronic monitoring as a specific condition of community supervision pursuant to s. 948.03(6), F.S. Case law has established that a special condition of probation must be reasonably related to the offense.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 948.03(5), F.S., by creating a new paragraph (3) that requires the sentencing court to order electronic monitoring for offenders placed on probation or community control for violating ch. 794, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0145, F.S., on or after July 1, 2004. The requirement is not restricted to offenders who are placed on sex offender probation for the specified offenses.

Section 2 of the bill requires the department to use a system of electronic monitoring that: (1) identifies the location of the monitored offender; and (2) reports when the offender enters an area which he or she is prohibited from entering, departs from an area to which he or she was restricted, or was near the location of a reported crime at the time the crime was committed. The system must be designed to include all criminal incident data throughout the state.

The bill does not specify the use of any particular technology, although global positioning system technology is the current standard for precise location tracking.

The bill specifies that the system must give timely alerts to the Department of Corrections when an offender enters an exclusion zone or leaves an inclusion zone. The system must also alert the appropriate local law enforcement agency when an offender's location correlates with the location of a reported crime. The bill gives the supervising agency the discretion to determine the frequency of reporting, depending upon the seriousness of the monitored offender's offense. The system must contain "all data about criminal incidents available throughout the state" and make timely reports when a supervised offender is at or near a crime scene. The active GPS monitoring systems that are currently used can provide correlation of offender location with the crime scene location if the crime scene location is individually entered. The bill envisions a system that automatically correlates the offender location points with all crime incident data throughout the state.

The bill provides for monitoring of a minimum of 1000 offenders who are placed on state probation or community control. Sex offenders who may lawfully be placed on electronic monitoring have priority. If more than 1000 sex offenders are eligible, the department must determine which offenders to monitor based upon risk-assessment criteria. If fewer than 1000 sex offenders are eligible, the balance of the 1000 monitored offenders would consist of those offenders who can lawfully be subjected to electronic monitoring and who are likely to commit sexual offenses or violent crimes. Again, the department would determine which offenders to monitor.

The bill also creates a statewide steering committee comprised of representatives from the department, the Attorney General's Office, FDLE, the Parole Commission, sheriffs' offices, police departments, and such other criminal justice officials as are appropriate. The steering committee has the responsibility for overseeing, guiding, and evaluating the system.

Section 3 of the bill provides an appropriation of \$7.8 million from the General Revenue Trust Fund to the department for contracting for the integrated statewide offender tracking and crime reporting system. The system is to be fully operational by December 1, 2004.

Section 4 of the bill provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill significantly expands the use of electronic monitoring by the Department of Corrections, which will result in increased revenues for the technology provider.

C. Government Sector Impact:

The bill provides an appropriation of \$7.8 million for the integrated system. This would include the cost and equipment for monitoring 1000 offenders, gathering crime incident data from throughout the state, and providing reports as specified in the bill and by the department. The equipment and monitoring cost for placing 1000 offenders on active GPS monitoring for one year, at the current cost of \$10.17 per day, is approximately \$3.7 million. The annual cost for gathering crime incident data from all jurisdictions in the state is also approximately \$3.7 million, based upon the amount that General Dynamics states that it would charge for statewide implementation of its CrimeTrax system. Currently, General Dynamics is the only known provider of a system that can automatically gather crime incident reports from local law enforcement agencies and provide alerts when a monitored offender was near the scene of a reported crime. However, the bill does not require the use of the CrimeTrax system and procurement would be subject to state purchasing laws.

Department of Corrections Fiscal Impact Analysis

The Department of Corrections examined the fiscal impact of the bill only with respect to the monitoring aspect. The cost of gathering crime incident reports and correlating them with offender locations was not considered.

Because of the lengthy time between offense date and sentencing for serious crimes, the department anticipates that only 227 additional sex offenders could be placed on monitoring during the first year. The equipment and technology costs are estimated at \$821,858 for the first year. However, the department states that the bill will require 25 additional full time employment positions at an annual cost of \$1,046,775. These positions would be for the purpose of handling technical issues with the equipment as well as entering data for exclusion and inclusion zones. The department anticipates

placing one position in each judicial circuit, with two in the larger circuits. These employees would not be certified correctional probation officers.

The department forecasts that 993 offenders would be electronically monitored pursuant to the bill's provisions in the second year. The equipment and monitoring costs would be \$3,595,176, and no additional FTE positions would be required beyond the 25 already discussed. Thus, the department estimates that the total cost of monitoring 993 offenders would be \$4,641,951. Although the department has found that a correctional probation officer must have a reduced case load to effectively supervise offenders on electronic monitoring, it believes that it can absorb supervision of an additional 993 offenders on electronic monitoring without more certified probation officers.

The department's fiscal impact analysis includes a significant escalation of costs for succeeding years based upon its understanding that the bill requires monitoring of all sexual offenders who commit the crimes specified in the bill. The cost increase is derived from increased equipment costs as well as an anticipated need for additional certified correctional officer positions to supervise the growing offender population.

VI. Technical Deficiencies:

The bill provides for monitoring a minimum of 1000 offenders, but also requires the department to apply risk assessment criteria to determine which offenders are placed on electronic monitoring if there are more than 1000 eligible offenders. This creates an ambiguity as to whether the bill requires monitoring of only 1000 offenders, all eligible offenders, or at least 1000 eligible offenders plus any additional offenders who can be monitored with the funding provided.

VII. Related Issues:

None.

VIII. Amendments:

None.