



## 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 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 with electronic monitoring 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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

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

<sup>2</sup> Rule 3.131(a), Fla. R. Crim. Proc.

<sup>3</sup> Section 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.

<sup>4</sup> s. 907.041(4), F.S.

involved agency (DOC, DJJ, counties, etc.). 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**

### Licensure of Bail Bond Agents

This bill authorizes licensed bail bond agents to:

- provide electronic monitoring services;
- subcontract with third-party vendors to provide monitoring services if the bail bond agent can certify that the equipment and services meet the requirements of s. 907.07, F.S. (s. 907.07, F.S. requires bail bond agents to register and comply with certain electronic monitoring equipment standards);
- if the monitoring equipment meets certain statutory requirements (contained in s. 907.08, F.S., and described below), register with governmental entities to provide electronic monitoring services when monitoring has been ordered by a court; and
- charge the person subject to electronic monitoring a reasonable, nonrefundable fee for electronic monitoring services.

Bail bond agents may remand persons subject to electronic monitoring who fail to pay the above fee to the court or sheriff. Additionally, the bill provides that the fee is not considered part of the bail bond premium.<sup>5</sup>

The bill requires bail bond agents to keep electronic monitoring records and receipts separate from bail bond records.

### Chapter 907, F.S. – Procedure After Arrest

Chapter 907, F.S., governs all conditions of pretrial release. This bill creates s. 907.06, F.S., related to electronic monitoring. It provides that a court may order, as a condition of pretrial release for a defendant charged with a violent felony or sex-related offense, or who has previously been convicted of a violent felony or sex-related offense, that the defendant be subject to electronic monitoring. The defendant must pay the cost of electronic monitoring, and failure to pay in a timely manner is a violation of pretrial release and is grounds for remand to the custody of the sheriff. Tampering with the electronic monitoring equipment and/or failing to cooperate with the vendor when notified that the equipment is malfunctioning is a violation of pretrial release and grounds for remand to the custody of the sheriff.

The bill further provides criteria for pretrial release electronic monitoring services. Specifically, the service must be capable of continuously receiving and monitoring the electronic signals from the transmitter worn by the defendant so as to be able to identify the defendant's location to within nine (9) meters using Global Positioning Satellite (GPS) technology. Licensed bail bond agents and governmental entities are authorized to provide such monitoring services. Bail bond agents and governmental entities (through competitive bidding) may subcontract with a vendor to provide monitoring services but retain primary responsibility for the monitoring.

The bill requires anyone providing electronic monitoring services to report known violations by the defendant to the appropriate authority. The bill clarifies that simply supplying electronic monitoring services is not an undertaking to protect the public from harm occasioned by a monitored person. Instead, the sole duty of one who provides monitoring services is to give law enforcement the location of a monitored person. Additionally, persons who provide monitoring services are not responsible for equipment failure or the criminal acts of monitored persons.

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<sup>5</sup> Section 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>.

This bill creates s. 907.07, F.S., which requires the chief judge in each circuit to maintain a list of licensed bail bond agents who are eligible to provide electronic monitoring services, and defines eligible vendors as licensed Florida bail bond agents who: certify annually, in writing, that the electronic monitoring equipment and services comply with the requirements discussed below.; register in writing the name and address of the licensed bail bond agent; and register in writing the name and phone number of the bail bond agent's contact person. Failure to comply may result in removal from the eligible vendor list. Eligible vendors must promptly notify the chief judge of any change in vendor registration information. 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.

This bill creates s. 907.08, F.S., which establishes the minimum standards that privately owned electronic monitoring devices must meet. Such equipment must:

- Be a transmitter unit that meets certification standards approved by the Federal Communications Commission;
- At the court's discretion either:
  - o Emit a signal content 24 hours per day that identifies the specific device being worn by the defendant and the defendant's physical location using GPS technology accurate to within nine (9) meters;
  - o Receive signal content 24 hours per day, determining the defendant's physical location using GPS technology accurate to within nine (9) meters, recording the defendant's physical locations throughout the day, and being capable of transmitting that record of locations to the vendor at least daily;
- With respect to a unit affixed to a defendant, possess an internal power source that provides a minimum of one (1) year of normal operation without recharging or replacing the power source. The device must emit a signal content that indicates its power status and provides the vendor with notification of whether the power source needs to be recharged or replaced;
- Possess and emit a 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 defendant;
- Be capable of being attached to the defendant in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection;
- Use straps or other mechanisms for attaching the transmitter to the defendant that are either capable of being adjusted to fit a defendant of any size or that are made available in a variety of sizes.

This bill creates s. 907.09, F.S., and establishes three new felony offenses related to electronic monitoring equipment. Specifically, it is a third degree felony<sup>6</sup> for any person to:

- intentionally alter, tamper with, damage, or destroy electronic monitoring equipment used to monitor a person pursuant to court order, 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 the location of a person pursuant to court order;

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<sup>6</sup> 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.

- intentionally alter, tamper with, damage, or destroy any data stored or transmitted by any electronic monitoring equipment used to monitor a person pursuant to court order with the intent to violate such court order or to conceal such violation.

These newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code.<sup>7</sup> Thus, the third degree felonies will default to a Level 1 offense.<sup>8</sup>

#### Electronic Monitoring Within DOC and DJJ Facilities

This bill creates ss. 944.161 and 985.4047, F.S., to authorize and encourage DOC and DJJ to electronically monitor inmates and juveniles in their respective facilities. Any electronic monitoring system used in the above facilities must be capable of continuously receiving and monitor electronic signals from a transmitter worn by an inmate/juvenile offender so as to monitor the inmate/juvenile offender in real time and identify the inmate/juvenile offender's location within the facility at any time. Transmitters must update in at least 5-second intervals and monitor inmates/juvenile 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 lesser. Transmitters may also be worn by employees, employees of private-sector companies contracted to operate facilities, and 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/juvenile offenders, employees, and visitors within the facility;
- Be capable of maintaining a 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/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/juvenile offender;

<sup>7</sup> s. 921.0012, F.S.

<sup>8</sup> s. 921.0013, F.S.

- Be capable of being attached to the inmate/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 mechanisms for attaching the transmitter to the inmate/juvenile offender which are capable of being adjusted to fit an inmate/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/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 DOC/DJJ 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 DOC/DJJ facility;
- intentionally alter, tamper with, damage, or destroy 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.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 648.387, F.S., authorizing bail bond agents to be vendors of electronic monitoring services; authorizing bail bond agents to contract with third-party vendors to provide electronic monitoring of pretrial releasees in certain circumstances; authorizing bail bond agents to register with a governmental entity to provide electronic monitoring services in certain circumstances; authorizing bail bond agents to collect a fee for electronic monitoring services; providing that failure to timely pay fees constitutes grounds for remand; providing that fees are exempt from specified premium requirements.

**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 a third-party vendor 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**

The following fiscal analysis reflects the estimated cost of using RFID technology system-wide (if it were required):

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**

DOC states it would be a significant financial burden on their budget if they were required to use EM systems in prisons (the bill does not require the use of EM systems, only authorizes the use). For example, should 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. 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 EM monitoring system at one institution. DOC cites little potential for staff savings should EM systems be implemented. Ultimately, 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:

DJJ states that counties pay for the cost of pre-adjudicatory detention and thus fund approximately 82% of DJJ's total detention budget. The numbers below reflect approximately 82% 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.

**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 497-499 and lines 627-629). The bill appears to give sufficient rule making authority that is appropriately limited.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

#### **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:

- Removes provisions of the bill relating to post-release offenders;
- Defines the terms “violent felony offense” and “sex-related offense;”
- Corrects grammatical and technical errors; and
- Eliminates the term “Radio Frequency Identification Technology” (RFID) from the bill;