

SENATE BILL 724

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 40,
relative to criminal offender monitoring.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, is amended by adding the following
as a new chapter:

40-40-101.

As used in this part:

(1) "DUI monitoring fund" means the fund created by § 55-10-419 that is available for financial assistance when a person is determined by the court to be unable to pay for their monitoring program fees but is required by court order to enroll in the monitoring program;

(2) "Electronic monitoring" means any device that tracks through satellite and communicates that information through cellular towers, giving the device's location and status, including battery percentage, device tampering, zone compliance or noncompliance, or a device that uses radio frequency (RF) to determine if a person is in a specific location such as house arrest by landline or ethernet, which is not GPS related;

(3) "Monitoring program" means a program whereby a person who has been charged with or convicted of a criminal offense is released from custody on bail, pre-trial diversion, judicial diversion, probation, or parole, and one (1) of the conditions of release is that the person participates in a program whereby the person's alcohol use, drug use, or geographic location are monitored by a public monitoring entity or a private monitoring entity either electronically or physically

through required in-person checks, testing, screening, global positioning system devices, transdermal monitoring devices, and other electronic devices;

(4) "Private monitoring company" means any private entity, whose business, in whole or in part, consists of contracting with a public entity for the purpose of monitoring persons who a court, magistrate, or board has ordered, as a condition of release, to participate in a monitoring program;

(5) "Public monitoring entity" means a department or other entity of state or local government whose duty, in whole or in part, is to supervise persons who have been charged with or convicted of a criminal offense and who may conduct a monitoring program or contract with a private monitoring company to conduct a monitoring program for persons under their supervision; and

(6) "Transdermal monitoring" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per quarter hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

40-40-102.

This part shall apply to:

(1) Any person who has been ordered by a court to participate in a monitoring program as a condition of bail, probation, parole, pre-trial diversion, judicial diversion, or any other form of release. A voluntary agreement between a person and a private entity to enter a monitoring program is not subject to this part;

(2) A certified private monitoring company; and

(3) A public monitoring entity.

40-40-103.

(a) To be a certified private monitoring company and do business in this state, the company must register with and be certified by the department of commerce and

insurance. A company seeking to be certified shall send the department documentation suitable to the commissioner of all of the following:

(1) The owner of the company is a Tennessee resident, the company is incorporated in this state, or the company has appointed an agent in this state who is authorized to accept service of process for the company;

(2) A Tennessee bureau of investigation and a federal bureau of investigation criminal history background check showing that no owner, operator, or employee of the company has been convicted of an offense classified as a felony in this state or any other state;

(3) Proof showing that the owner, chief operating officer, or president of the company has, at a minimum, an educational background of at least a two-year associate's degree from an accredited college or university;

(4) Proof that the company has obtained a performance bond in an amount of no less than one hundred thousand dollars (\$100,000);

(5) Proof that the company carries a comprehensive liability insurance policy in an amount of not less than one million dollars (\$1,000,000);

(6) An annual certification fee of two hundred fifty dollars (\$250) in the form of a certified check; and

(7) A one-time administration fee of one thousand dollars (\$1,000) in the form of a certified check.

(b) To conduct a monitoring program in this state, all public monitoring entities and private monitoring companies shall have, at a minimum, equipment capable of the following:

(1) Batteries shall be capable of three hundred sixty-five (365) cycles of charging and discharging. The electronic monitoring device must complete the

charge process one hundred percent (100%) from a discharged state within a two-hour period and last for a minimum of twenty-four (24) hours on a two-hour charge;

(2) The electronic monitoring device strap must generate a time-stamp tamper event within five (5) seconds of being cut and provide an alert within five (5) minutes of the time stamp;

(3) The electronic monitoring device must generate a "zone alert" within four (4) minutes of crossing the boundary of an exclusion zone, an area in which the offender is prohibited to be, or an inclusion zone, an area where an offender is to remain for a scheduled period of time such as house arrest;

(4) The electronic monitoring device must demonstrate detection and alerting for loss of location incidents within two (2) hours;

(5) The electronic monitoring device must demonstrate detection and alerting for incidents in which communication, including cellular communication, has been lost for a period of at least two (2) hours and generate an alert accordingly;

(6) The electronic monitoring device must have an adjustable data collection rate that ranges from at least one (1) location point per minute to one (1) location point every fifteen (15) minutes. There may not be any rate plan that exceeds fifteen (15) minutes per point;

(7) The electronic monitoring device must upload data points at a minimum of ten (10) minutes, but not to exceed fifteen (15) minutes;

(8) The electronic monitoring device must provide a location that is accurate:

(A) Within ten (10) meters, ninety percent (90%) of the time in an

open air environment with no obstructions; and

(B) Within thirty (30) meters, ninety percent (90%) of the time when placed in an eight-foot by eight-foot single story structure; and

(9) Software must be able to determine if drift points occur and be able to show accuracy of each point. "Drift points" mean when the earth rotates as well as satellites, and a location point may be placed far away at one (1) point and then back to normal on the next point.

(c)

(1) If the commissioner determines that a private monitoring company meets all of the requirements of subsection (a) and has equipment capable of operating as required in subsection (b), the commissioner shall certify the private monitoring company and add it to the list of certified private monitoring companies.

(2) By September 1, 2017, and every September 1 thereafter, the commissioner shall send by electronic means a list of approved private monitoring companies to the presiding judge of each judicial district. If a company is certified after September 1 of a year, the commissioner shall have thirty (30) days to distribute an updated list to the presiding judges.

40-40-104.

(a) Each private monitoring company or public monitoring entity that conducts a monitoring program containing participants who are required to wear an electronic monitoring device shall send a report via email or in person, if there is confirmed information that a participant has committed a violation by cutting the strap of the electronic device, to the court having jurisdiction over the participant and the participant's bonding company, if applicable. If the participant is charged with or convicted of an

offense for which there is a victim, such as a sexual offense, stalking, or domestic assault, the company or entity shall make all reasonable efforts to also notify the victim or victims. If a victim wishes to be notified of any cut strap violation by the alleged perpetrator of the offense, the victim has a duty to furnish current contact information to the private company or public entity so that the company or entity is able to contact the victim, if necessary. The report of violation required by this subsection shall give the status of the person being monitored and shall include the person's record of compliance or noncompliance with the monitoring program.

(b) Each private company or public entity operating a monitoring program shall also be required to send the court having jurisdiction over the participant a status letter, for each court appearance within twenty-four (24) hours of appearance, which shall contain compliance or noncompliance reports for alcohol consumption, drug consumption, zone violations, tampering, and any other restrictions imposed by the court, magistrate, or board. The status letter shall also contain global positioning location documents with time stamps provided to show zone violations.

(c) All violations of a transdermal or electronic monitoring device or a violation of a condition imposed upon the participant's release to a monitoring program shall be reported to the court, board, or magistrate ordering a monitoring program within twenty-four (24) hours or the following business day of the confirmed violation.

40-40-105. Any pretrial release or diversion agent, bonding company, probation officer, or parole officer who wishes to have direct access through a web portal is required to have the same training as an agent of a private monitoring company. However, only violations approved by the private monitoring agency or public monitoring entity shall be filed with the board, court, or magistrate who ordered the participant to a monitoring program.

40-40-106. Any person ordered to participate in a monitoring program and wear a transdermal or electronic monitoring device shall follow the guidelines for release established by the court, magistrate, or board ordering the monitoring program. Each judicial district shall establish a protocol for a participant's release into a monitoring program, but if release requires the participant to wear an electronic device, a maximum time of twenty-four (24) hours shall be allowed for installation of the device to occur. If the device is an ignition interlock device, ten (10) days shall be allowed for installation.

40-40-107. Any monitoring program participant ordered to wear a transdermal or other electronic monitoring device may choose a public monitoring entity, if available, or any certified private monitoring company, to install and monitor the transdermal or other electronic monitoring device. However, if the jurisdiction is under contract with a specific vendor or agency, the program participant shall use that vendor or agency.

40-40-108. All monitoring fees paid to a private monitoring company or a public monitoring entity shall be paid for by the participant in the amount set forth by the monitoring programs participation agreement, unless the participant is deemed indigent pursuant to § 55-10-419. If the participant is determined by the court to be indigent, the DUI monitoring fund will assist by paying up to two hundred dollars (\$200) per person, per device and will assist the person throughout the duration of the person's participation in the monitoring program. In order for the monitoring company to receive reimbursement, a court order and affidavit of indigency is required to be filled out by the court and submitted to the monitoring company. The order shall contain the indigent participant's name, date of birth, case number, length of time the person is to be enrolled, how much the state is required to pay, not to exceed two hundred dollars (\$200), and how much the participant is required to pay. The participant's failure to pay fees associated with the monitoring program shall be considered a direct violation of the monitoring program ordered by the court, magistrate, or board. Delinquent status will occur if the participant

reaches fourteen (14) days of non-payment. If a private monitoring company files a violation of delinquency with the court, and the court requires the monitoring company to keep the participant enrolled in the program, the court shall enroll the offender into the DUI monitoring fund pursuant to § 55-10-419.

40-40-109.

(a) The knowing failure of a private monitoring company or public monitoring entity to send the notifications required by this part, such as status letters, timely violation reports, or other requested reports, shall be grounds for the court, board, or magistrate to remove the private monitoring company or public monitoring entity from the list of monitoring companies available for use by a monitoring program participant in that jurisdiction. Before removal is imposed by the court, a hearing shall take place to determine any violation.

(b) The length of removal from the certified list shall be:

- (1) First offense.....5 Days
- (2) Second offense.....15 Days
- (3) Third or Subsequent Offense.....30 Days

40-40-110.

For each participant that is enrolled into a transdermal or electronic monitoring program, the private monitoring company or public entity, shall pay to the state a fifteen dollar (\$15.00) one-time tax. Those funds shall be allocated by ten dollars (\$10.00) being deposited into the state general fund and five dollars (\$5.00) into the DUI monitoring fund created by § 55-10-419.

SECTION 2. Tennessee Code Annotated, Section 40-11-118(d)(2), is amended by adding the following new subdivision:

() The use of a global positioning system (GPS) device for the duration of the time the defendant is on bail;

SECTION 3. Tennessee Code Annotated, Section 40-7-103, is amended by adding the following new subdivision to subsection (a):

() When a person has committed a violation of § 40-11-118(g)(1)(A) or § 40-11-118(g)(1)(B);

SECTION 4. This act shall take effect July 1, 2017, the public welfare requiring it.