

SENATE BILL 1046

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 28, relative to electronic monitoring.

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

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding Sections 2 through 8 of this act as a new part thereto.

SECTION 2. All violations involving the installation or deactivation of an electronic monitoring device or a violation of a court order shall be reported to the appropriate probation officer or their designee within twenty-four (24) hours of the violation.

SECTION 3. Each office or agent who for a fee monitors persons who are required to wear an electronic monitoring device shall provide access to electronic data and websites to probation officers or their designee under whose supervision such persons are placed for the sole purpose of reviewing monitoring information.

SECTION 4. No person ordered by a court to wear an electronic monitoring device shall be released from custody until such electronic device is installed on their person.

SECTION 5. Unless the person ordered by a court to wear an electronic monitoring device is indigent, such person may choose an agent authorized to install and monitor such electronic devices.

SECTION 6. The willful failure to send notifications to probation officers may result in the suspension or revocation of the authority of such agent or office to oversee electronic monitoring over persons under their supervision.

SECTION 7.

(a)

(1)

(A) There is created in the state treasury a fund to be known as the electronic monitoring fund. Except as provided in subsection (f), all money in such fund shall be used to pay for the following for persons deemed by the court to be indigent:

(i) The costs associated with the lease, purchase, installation, removal, and maintenance of electronic monitoring devices or with any other cost or fee associated with a functioning electronic monitoring device required by this part; and

(ii) The costs associated with the use of a transdermal monitoring device or other alternative alcohol or drug monitoring device, if required by the court.

(B) Notwithstanding subdivisions (a)(1)(A)(i) and (ii), no more than one hundred dollars (\$100) per month shall be expended from the fund to pay the costs associated with an indigent person's electronic monitoring device pursuant to subdivision (a)(1)(A)(i), or an indigent person's transdermal monitoring device or other alternative alcohol or drug monitoring device, pursuant to subdivision (a)(1)(A)(ii).

(2) Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in subdivision (a)(1).

(3) Interest accruing on investments and deposits of the electronic monitoring fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(4) Moneys in the electronic monitoring fund account shall be invested by the state treasurer in accordance with § 9-4-603.

(b) The costs incurred in order to comply with electronic monitoring requirements shall be paid by the person ordered to wear an electronic monitoring device, unless the court finds such person to be indigent. If a court determines that a person is indigent,

the court shall order such person to pay any portion of the costs which the person has the ability to pay, as determined by the court. Any portion of the costs the person is unable to pay shall come from the electronic monitoring fund established pursuant to subsection (a).

(c) Whenever a person ordered to wear an electronic monitoring device asserts to the court that the person is indigent and financially unable to pay for a functioning electronic monitoring device, it shall be the duty of the court to conduct a full and complete hearing as to the financial ability of the person to pay for such device and, thereafter, make a finding as to the indigency of such person.

(d) A person is indigent and financially unable to pay for a functioning electronic monitoring device if the person is receiving an annual income, after taxes, of one hundred eighty-five percent (185%) or less of the poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. § 9902(2).

(e) Every person who informs the court that the person is financially unable to pay for a functioning electronic monitoring device shall be required to complete an affidavit of indigency that is designed by the administrative office of the courts for purposes of assisting the court in making its determination pursuant to subsection (c). If the person intentionally misrepresents, falsifies, or withholds any information required by the affidavit of indigency, such person commits perjury as set out in § 39-16-702.

(f) If at any time after July 1, 2017, there are no funds in the electronic monitoring fund or the fund is depleted, any authorized agent who provides any indigent person required to have a functioning electronic device who is ordered to wear such device shall be reimbursed from the electronic monitoring fund when such funds are

available. Payments to authorized agents shall be in the order requests for payment are received by the state treasurer.

SECTION 8. All agents installing electronic monitoring devices pursuant to this part shall be authorized by the presiding judge of criminal matters in each judicial district. Each probation office shall maintain a list of all authorized agents and shall provide such list to all individuals ordered to wear an electronic monitoring device. No preference shall be given or expressed for any agent or company authorized to install electronic monitoring devices. Payments for such electronic monitoring devices shall be made directly to the agent or company installing and monitoring such devices. A failure to make payments timely for such electronic monitoring device is a violation of the terms of probation.

SECTION 9. This act shall take effect July 1, 2017, the public welfare requiring it.