

*Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 51,
No. 119, 6th July, 2012*

Second Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 2012

[L.S.]

AN ACT to make provision for the implementation of a
system for electronic monitoring in Trinidad and
Tobago and for related matters

[Assented to 3rd July, 2012]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title and commencement

1. (1) This Act may be cited as the Administration of Justice (Electronic Monitoring) Act, 2012.

(2) This Act shall come into operation on a date to be fixed by the President by Proclamation, save however that different sections may be brought into effect on different dates.

Act inconsistent with the Constitution
Chap. 1:01

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

PART I

PRELIMINARY

Interpretation and application

3. (1) In this Act—

“child” means an individual below the age of eighteen years who is charged with or convicted by a Court for an offence;

“competent authority” includes a Statutory Board or Tribunal or other authority, appointed under any written law for the purposes of this Act;

“Court” means a Judge, a Magistrate or a Coroner;

“electronic monitoring” means the use of electronic or telecommunication systems to assist in the supervision of an individual;

“electronic monitoring device” or “device” includes a device which operates on a global positioning system or radio frequency;

“person” means an individual who is charged with or convicted by a Court for an offence;

“public official” means a Minister or Permanent Secretary;

“Regulations” mean Regulations made by the Minister under section 25;

“respondent” means an individual against whom an application for a Protection Order is made or against whom a Protection Order is granted under the Domestic Violence Act; Chap. 45:56

“the Minister” means the member of the Cabinet to whom responsibility for offender management is assigned and “the Ministry” has the corresponding meaning;

(2) Subject to the Young Offenders Detention Act and the Children Act and any other written law Chap. 13:05 granting rights or protection to a child, this Act applies Chap. 46:01 to a child.

PART II

THE ELECTRONIC MONITORING UNIT

4. (1) The Electronic Monitoring Unit (“the Unit”) of Electronic Monitoring Unit the Ministry, is hereby established for the purpose of implementing the system for electronic monitoring in accordance with this Act.

(2) The staff of the Unit shall include—

(a) the Director of Electronic Monitoring (“the Director”) who shall be the head of the Unit;

(b) the Deputy Director of Electronic Monitoring (“Deputy Director”); and

(c) such other suitably qualified individuals as may be necessary for the proper functioning of the Unit.

(3) The Director and Deputy Director shall be individuals with tertiary level education and at least three years experience in a related field.

(4) The offices of Director and Deputy Director shall be public offices to which section 121 of the Constitution applies and shall also be prescribed for the purposes of section 141 of the Constitution.

(5) The terms and conditions of the offices referred to in subsection (4) shall be reviewed by the Salaries Review Commission established under section 141 of the Constitution.

(6) The members of staff other than the Director and Deputy Director shall be engaged on contract, in accordance with guidelines for contract employment established by the Chief Personnel Officer.

Transitional

5. (1) Without prejudice to the power of the Public Service Commission to make an appointment to the offices of the Director and the Deputy Director, where prior to the making of the first appointments to those offices, and the exigencies of the public service require the recruitment of individuals to perform the functions of those offices, the Permanent Secretary of the Ministry may engage, as an Electronic Monitoring Manager and Deputy Electronic Manager, suitably qualified individuals until such appointments are made in accordance with section 4(4) and (5).

(2) A contractual arrangement made under subsection (1) shall be in accordance with the guidelines for contract employment as established by the Chief Personnel Officer.

Responsibilities
of the Unit

6. (1) In furtherance of its responsibility for implementation and maintenance of the system for electronic monitoring, the Unit shall be responsible for—

- (a) ensuring the security of the system for electronic monitoring;
- (b) retrieving and analyzing information from the system for electronic monitoring; and

(c) reporting any non-compliance with a decision of the Court or competent authority and breaches related to the use of a device.

(2) Notwithstanding the generality of the foregoing, the Unit shall—

(a) provide real time tracking of the location of a person or a respondent;

(b) report alarm notifications, signal loss and device malfunction forthwith to the relevant state agency;

(c) exercise central control of all monitoring information;

(d) maintain a register of decisions transmitted to it by the Court or other competent authority and information relating to the subject of any decision;

(e) undertake the fitting, maintenance and removal of a device;

(f) ensure that a historic record is maintained of all electronic monitoring spatial data, including any technological equipment necessary to read and display such information;

(g) improve information technology and electronic monitoring literacy within the Ministry and advance electronic monitoring awareness;

(h) provide technical assistance when necessary; and

(i) provide training when necessary.

(3) The Unit shall comply with any decisions made by the Court or other competent authority.

(4) The records maintained under this Act shall be kept for a period of not less than five years.

7. (1) A public official, authorized by the Cabinet, may Contract for services enter into an agreement with a company (“a service provider”) for the purposes of—

(a) training in any aspect of electronic monitoring; or

(b) the performance of specified functions under section 6(2).

Act No. 14 of 2010

(2) The Interception of Communications Act, 2010 shall apply to the use of electronic monitoring devices and their communication capabilities.

Confidentiality of information

8. (1) An officer or individual engaged on contract with the Unit and any individual engaged by a service provider in furtherance of section 7, shall not disclose any information received from the Unit or service provider in the course of his employment, otherwise than in the proper exercise of his functions.

(2) An officer or individual engaged on contract with the Unit and any individual engaged by a service provider who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for two years.

PART III

ELECTRONIC MONITORING

Approval of devices

9. The Minister may by Order, subject to negative resolution of Parliament, approve the electronic monitoring devices to be used for electronic monitoring.

Electronic monitoring imposed by the Court

10. (1) Subject to subsection (3), the Court may impose a sentence of electronic monitoring—

(a) for an offence committed; or

(b) in lieu of a sentence of imprisonment or part of any sentence imposed,

after the coming into force of this Act.

(2) The Court may at any time, also impose electronic monitoring as a condition of—

(a) an order for bail; or

(b) a Protection Order made under section 5 of the Domestic Violence Act.

Chap. 45:56

(3) The Court shall not however, impose electronic monitoring in respect of any of the offences listed in the First Schedule.

First Schedule

(4) Where a respondent is arrested and charged with an offence under section 20 of the Domestic Violence Act, the Court may grant bail with or without electronic monitoring, but in making its decision, the Court shall not request the consent of the respondent.

(5) Before making a decision under—

(a) subsection (1) or (2), the Court may request a Report from the Director concerning the person or respondent which the Director may cause to be provided as soon as it is practicable; and

(b) subsection (2)(a), the Court shall request the consent of—

(i) a person, where that person is not a child; or

(ii) in the case of a child, his parent or guardian,

to impose electronic monitoring and where such consent is not given, the Court shall commit the person to custody.

(6) The Director shall also obtain permission, in the prescribed form, from the occupier of the premises in which any monitoring instrument is to be installed or the individual without whose co-operation it would not be practicable to implement electronic monitoring.

(7) While awaiting the report of the Director, the Court shall commit the person to custody, but in the case of the respondent, the Court may make an Interim Order under section 8(1) of the Domestic Violence Act.

(8) In making a decision under this section, the Court shall take into account the report of the Director which shall be prepared in accordance with the Second Schedule and the Court shall have regard to the character, antecedents, physical and mental health of the person or respondent, to any extenuating

circumstances in which an offence was committed and to the possible threat to public safety caused by his release.

(9) The Court shall explain to a person over the age of sixteen years or respondent, and in the case of a person under the age of sixteen years, his parent or guardian, the meaning and effect of the decision, as well as the effect of non-compliance with it.

Electronic monitoring
as a condition of a
pardon

11. Electronic monitoring may be imposed as a lawful condition of a pardon granted under section 87(2)(a) of the Constitution.

Electronic monitoring
issued by a
competent authority

12. (1) A competent authority empowered to grant early release from imprisonment under any written law, may impose electronic monitoring as a condition of such release.

(2) Before making a decision under subsection (1), the competent authority shall request a report from the Director concerning the person, which the Director shall cause to be provided as soon as it is practicable and the competent authority shall, where necessary, commit the person to appropriate custody while awaiting the report.

(3) The Director shall also obtain permission, in the prescribed form, from the occupier of the premises in which any monitoring instrument is to be installed and the individual without whose co-operation it would not be practicable to implement electronic monitoring.

(4) In making a decision under this section, the competent authority shall take into account the report of the Director which shall be prepared in accordance with the Second Schedule and the competent authority shall have regard to the character, antecedents, physical and mental health of the person, to any extenuating circumstances in which the offence was committed and to the possible threat to public safety caused by his release.

Second Schedule

(5) The competent authority shall explain to the person and in the case of a child, his parent or guardian the meaning and effect of the decision, as well as the effect of non-compliance with it.

(6) Sections 14, 15 and 16 shall apply in respect of a decision of the competent authority as they apply in respect of a decision of the Court.

13.(1) Any individual may apply to the Court on the prescribed form and subject to criteria prescribed in regulations to have a device fitted on him. Electronic monitoring by application

(2) Before granting approval for the use of the device, the Court shall explain to the applicant the purpose and use of such a device as well as his responsibilities under the Act.

14. When the Court receives a report from the Director, a decision shall be taken concerning the type of device to be fitted, on the basis of— Type of device

- (a) the recommendations contained in such report;
- (b) any Order made by the Minister under section 9; and
- (c) all the circumstances of the matter being heard.

15. Where the Court, having considered the report of the Director, is of the view that— Payment for use of device

- (a) a person, other than a child;
- (b) a respondent;
- (c) in the case of a child, his parent or guardian; or
- (d) an applicant under section 13,

has the financial capability to pay either the total cost of the use of the device or any part thereof, the Court may require total or partial payment.

16.(1) A decision made by the Court shall contain a directive on the period of time for which the device shall be worn and either— Terms of electronic monitoring

- (a) that the person or respondent be in such place and for such period in each day or week as may be specified; or

(b) that the person or respondent not be in such place at such time or during such period as may be specified.

(2) The Court may also impose any other terms as it deems fit.

(3) Copies of the decision of the Court made under section 10 shall be given to the person or respondent, and in the case of a child, his parent or guardian, and transmitted to the Unit as soon as it is practicable after it is made.

PART IV

OFFENCES

Tampering with or removal of a device

17.(1) An individual who deliberately tampers with or removes a device commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

(2) In this section, “tampering” means anything which interferes with or is capable of interfering with the proper functioning of the device or which disrupts or is capable of disrupting the transmission of the monitoring signal of the device to the Unit.

Non-compliance with a decision or breach of a condition

18.(1) A person or respondent, who fails to comply with a decision of the Court or breaches any agreement or condition related to the use of the device, shall be brought before the Court in accordance with this section.

(2) As soon as the Director receives information that non-compliance or a breach under subsection (1) has occurred, he shall forthwith report the matter in writing or electronically to a police officer in charge of the police station in the magisterial district in which the breach purportedly occurred.

(3) A police officer who receives information under subsection (2), shall forthwith cause the person or respondent to be arrested and brought before the Court.

Change of circumstances

19.(1) A respondent or person, other than a child, upon whom a device has been fitted, shall notify the Director of any proposed change or change in his circumstances, within a reasonable time before the proposed change is due to occur or within a reasonable time after the change occurs.

(2) Where there is a change or proposed change in the circumstances of a child who has been fitted with a device, the parent or guardian of the child shall notify the Director within a reasonable time before the proposed change is due to occur or within a reasonable time after the change occurs.

(3) Failure to comply with this section shall constitute a breach of a decision under section 18, which shall be dealt with under section 20.

20. (1) Where a person or respondent is brought before the Court under section 18(3), the Court may in the case of—

Power of the Court in respect of non-compliance with a decision or in respect of an offence

- (a) a person on bail, take a decision in accordance with the Bail Act;
- (b) a person against whom a decision was made for electronic monitoring for an offence committed or in lieu of imprisonment, impose any sentence which the Court could impose for the offence with which he was originally charged; or
- (c) a respondent, impose the penalty prescribed for breach of a Protection Order under section 20 of the Domestic Violence Act,

Chap. 4:60

and in any other case, make such order as it thinks fit.

(2) It shall be a defence for an individual brought before the Court for tampering with or removal of a device, to prove that he did so in circumstances that constituted an emergency.

21. Notwithstanding the dismissal of any matter as a result of a defence raised under section 20(2), a detailed report of the reasons given for the non-compliance, or breach under section 18 or tampering or removal under section 17 shall be placed on the records kept by the Unit in respect of the person or respondent, together with a report from a medical practitioner, where applicable.

Record of non-compliance or tampering

Report may be
tendered in evidence

22. (1) Subject to this section, in any proceedings before a Court, a document or statement recording the whereabouts of the person or respondent, at any given point in time, originating from the electronic monitoring system and—

- (a) signed under the hand of the Director; and
- (b) supported by a certificate of a Justice of the Peace, authenticating the statement or document,

shall be *prima facie* evidence that the person or respondent, was at the place at the time recorded in the statement or document.

Chap. 7:02

(2) Section 14B of the Evidence Act, shall apply to a document or statement tendered in evidence under this section, in the same manner as it applies to a statement from a computer under that Act.

Knowingly giving
false information an
offence

23. (1) In furtherance of his functions under section 10(8) or 12(4), the Director may request information from a person, respondent, or the parent or guardian of a child.

(2) A person, respondent, or parent or guardian of a child who knowingly gives false information under this section, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for two years.

Offence of Duplication

24. An individual who makes, copies or in any way duplicates an electronic monitoring device commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and imprisonment for one year.

PART V

MISCELLANEOUS

Regulations

25. (1) The Minister may make Regulations subject to negative resolution of Parliament for—

- (a) the procedures to be followed by the staff of the Unit in the monitoring of persons or respondents and the evaluation of information and all other matters pertaining thereto;

- (b) conditions that are to be included in a decision pursuant to section 16;
- (c) circumstances constituting an emergency under section 20(2);
- (d) procedures for managing alerts, maintaining and analyzing data;
- (e) procedures to be followed upon loss of signal or equipment malfunction;
- (f) any means test related to payment for the use of the electronic monitoring device;
- (g) the form of consent required under sections 10(6) and 12(3); and
- (h) any other matter required to give effect to this Act.

(2) An individual who contravenes any of the Regulations made under this section commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for six months.

26. The written laws set out in the First Column of the Miscellaneous amendments Third Schedule are amended to the extent set out in the Second Column of the said Schedule.

27. The Minister may by Order, amend the First and Amendment of the Schedules Second Schedules.

FIRST SCHEDULE

[Section 10(3)]

List of offences for which electronic monitoring may not be imposed by way of a sentence or in lieu of a sentence—

1. Treason.
2. Offences against the individual, namely—
 - (a) Murder;
 - (b) Conspiring or soliciting to commit murder;
 - (c) Manslaughter; and
 - (d) Shooting or wounding with intent to do grievous bodily harm, unlawful wounding.

3. Offences involving kidnapping, namely—
 - (a) Kidnapping;
 - (b) Kidnapping for ransom;
 - (c) Knowingly negotiating to obtain a ransom.
4. Drug trafficking, namely—
 - (a) Trafficking in a dangerous drug; and
 - (b) Possession of a dangerous drug for the purpose of trafficking.
5. Unlawful possession of a firearm or ammunition.

SECOND SCHEDULE

[Sections 10(8) and 12(4)]

Matters to be included in the report of the Director

The information which the Director shall supply to the Court may include—

- (a) the full name and any assumed names of the person or respondent;
- (b) whether the person or respondent has a stable place of residence, the address and whether the residence is sufficiently secure;
- (c) all telephone contacts and information on the capacity of the person's or respondent's, or in the case of a child, his parent's or guardian's, land line to accommodate the electronic monitoring device;
- (d) an emergency telephone contact and name of next-of-kin;
- (e) a list of any pets or other elements which may compromise the integrity of electronic monitoring equipment;
- (f) a list of any commitments such as employment, dependents and addresses of same;
- (g) an assessment of the person's or respondent's financial capability, or in the case of a child, the financial capability of his parent or guardian, to pay for the use of the electronic monitoring device;

- (h) a recommendation on the type of electronic monitoring device which is appropriate for the particular case;
- (i) any history of spousal or family abuse while living with family;
- (j) documentation evidencing pre-existing physical or mental condition of the person or respondent;
- (k) whether the person or respondent, or in the case of a child, his parent or guardian, has access to a standard power service; and
- (l) whether the victim agrees to the person or respondent being released under supervised monitoring.

THIRD SCHEDULE

[Section 26]

CONSEQUENTIAL AMENDMENTS

FIRST COLUMN	SECOND COLUMN
<p>The Bail Act, Chap. 4:60</p> <p>Act No. of 2012</p>	<p>Section 12(3) of the Bail Act is amended by—</p> <p>(a) deleting the comma at the end of paragraph (c) and substituting the words “; and”;</p> <p>(b) inserting the following paragraph: “<i>(d)</i> be subject to electronic monitoring.”;</p> <p>(c) inserting the following subsections: “ (3A) In making a decision under subsection (3)<i>(d)</i>, the Court shall take into account—</p> <p style="padding-left: 40px;">(a) a report of the Director based on information detailed in the Second Schedule of the Administration of Justice (Electronic Monitoring) Act, 2012;</p> <p style="padding-left: 40px;">(b) the submissions of the prosecution; and</p>

(c) any other relevant information made available to it.

(3B) Before making a decision under subsection (3)(d), the Court shall explain its meaning to the person and the consequences of its breach.

(3C) Copies of the decision shall be given to the person and sent to the Electronic Monitoring Unit, established under the Administration of Justice (Electronic Monitoring) Act, 2012.

(3D) (1) The terms of a decision made under subsection (3)(d) shall include a directive either at paragraph (a) or (b) and at paragraph (c) as follows:

(a) a requirement that the person be in such place and for such period in each day or week as may be specified;

(b) a requirement that the person not be in such place at such time or during such period as may be specified; and

(c) the duration of time for which the Order shall be in force.

(2) The court may also impose any other terms related to paragraphs (a) or (b) and (c) prescribed by Regulations made by the Minister under section 25 of the Administration of Justice (Electronic Monitoring) Act, 2012.

(3E) In this section, “electronic monitoring” means the use of electronic or telecommunication systems to assist in the supervision of an individual.

The Domestic
Violence Act,
Chap. 45:56

The Domestic Violence Act is amended—

(a) in section 6, by inserting the following subsection:

“ (3A) The Court may also impose electronic monitoring on the respondent as a condition of a Protection Order, in accordance with the Administration of Justice (Electronic Monitoring) Act, 2012.”; and

Act No. of 2012

(b) in section 8(4), by inserting after the words “section 6” the words “but shall not contain directions for electronic monitoring”.

Passed in the House of Representatives this 4th day of May, 2012.

J. SAMPSON-MEIGUEL

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of 26 members of the House.

J. SAMPSON-MEIGUEL
Clerk of the House

Passed in the Senate this 9th day of June, 2012.

N. ATIBA-DILCHAN
Clerk of the Senate

It is hereby certified that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of 22 Senators.

N. ATIBA-DILCHAN
Clerk of the Senate

Senate Amendments were agreed to by the House of Representatives on the 15th day of June, 2012.

J. SAMPSON-MEIGUEL
Clerk of the House