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Second Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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

THE ADMINISTRATION OF JUSTICE (ELECTRONIC
MONITORING) BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to make provision for the introduction of electronic monitoring in Trinidad and Tobago, at different stages of the criminal justice process and as a condition of a Protection Order, granted under section 5 of the Domestic Violence Act, Chap. 45:56.

This Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required, pursuant to section 13 of the Constitution, to be passed by a special majority of three-fifths of the members of each House.

Clause 1 of the Bill would provide for the short title and commencement.

Clause 2 of the Bill would provide that the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Part I of the Bill, "Preliminary", would comprise clause 3.

Clause 3 of the Bill would provide for the interpretation of certain terms such as "competent authority", "electronic monitoring" and "electronic monitoring device".

Part II of the Bill, "The Electronic Monitoring Unit", would comprise clauses 4 to 7.

Clause 4 of the Bill would establish the Electronic Monitoring Unit ("the Unit") and would provide for staff of the Unit to include an Electronic Monitoring Manager and other officers and employees to be engaged on contract.

Clause 5 of the Bill would provide for the functions of the Electronic Monitoring Unit which would include the implementation and maintenance of the electronic monitoring system. The Unit would be responsible for retrieving and analyzing data and reporting breaches of Court decisions.

Clause 6 of the Bill would provide for the Government to enter into a contract with a company for the provision of any of the functions of the Unit.

Clause 7 of the Bill would provide that members of staff of the Unit shall not disclose any information received during the course of their employment and would provide that failure to comply with this provision, would be an offence punishable in accordance with the prescribed penalties.

Part III of the Bill, “Electronic Monitoring”, would comprise clauses 8 to 14.

Clause 8 of the Bill would empower the Minister to approve the type of electronic monitoring devices to be used by the Court or competent authority.

Clause 9(1) and (2), of the Bill would provide for the Court to impose a sentence of electronic monitoring in lieu of a custodial or non-custodial sentence, as a condition of an order for bail made under the Bail Act, Chap. 4:60 or as a condition of a Protection Order under the Domestic Violence Act, Chap. 45:56. It would also provide that in the making of such a decision, the Court will take into account the report of the Electronic Monitoring Manager.

Clause 9(3) however, would also provide that the Court shall not impose electronic monitoring for any of the offences listed in the First Schedule and for the Electronic Monitoring Manager’s report to be prepared in accordance with the Second Schedule.

Clause 10 of the Bill would provide for electronic monitoring to be imposed as a lawful condition of a pardon granted by the President under section 87(2)(a) of the Constitution.

Clause 11 of the Bill would provide that electronic monitoring may also be imposed by a competent authority with respect to early release from imprisonment. This clause would also provide that in the making of such a decision, the competent authority will take into account the report of the Electronic Monitoring Manager.

Clause 12 of the Bill would provide that the Court take into account the recommendation of the Electronic Monitoring Manager as well as all the circumstances of the matter in making a decision with respect to the type of electronic monitoring device to be fitted on a person or respondent.

Clause 13 of the Bill would empower the Court to request the person or respondent to make full or partial payment for the use of

the electronic monitoring device. The Court would also be empowered to exempt the person or respondent from such payment. The Court's power would be exercisable on the basis of the report of the Electronic Monitoring Manager.

Clause 14 of the Bill would provide that the decision of the Court to impose electronic monitoring shall include a term that imposes a curfew or that restrains the person or respondent from being present in a specified place for a period of time.

Part IV of the Bill, "Offences", would comprise clauses 15 to 20.

Clause 15 of the Bill would create offences of tampering with an electronic monitoring device and aiding and abetting the tampering with such a device and would prescribe the penalties for such offences.

Clause 16 of the Bill would provide the procedure to be followed in the event of non-compliance with a decision of the Court or breach of any agreement made with respect to electronic monitoring and would provide for a police officer to arrest the person or respondent and cause him to be brought before the Court.

Clause 17 of the Bill would empower the Court in cases of non-compliance or breach, to impose the original sentence which would have been imposed on the person, as well as the penalty prescribed for breach of a Protection Order under the Domestic Violence Act, where applicable. This clause would also provide a defence to tampering if it can be proved that the tampering was done in emergency circumstances. Such circumstances would be prescribed by Regulations.

Clause 18 of the Bill would provide that, in the event of a dismissal of proceedings before the Court, a detailed report of the reasons for such dismissal shall be placed on the person's or respondent's record maintained by the Unit.

Clause 19 of the Bill would provide for a statement or document originating from the electronic monitoring system to be admissible as *prima facie* evidence in proceedings before a Court.

Clause 20 of the Bill would create an offence where a person who is required to provide information under or in pursuance of the Act, knowingly gives false information.

Part V of the Bill, “Miscellaneous”, would comprise clauses 21 to 23.

Clause 21 of the Bill would empower the Minister to make Regulations subject to negative resolution of Parliament, for, *inter alia*, the procedure to be followed by staff of the Unit, the conditions that are included in a decision, circumstances constituting an emergency, and a means test for the payment for the use of the device. This clause would also provide for contravention of the Regulations to be an offence and would prescribe the penalties.

Clause 22 of the Bill would provide for the consequential amendments to the the Bail Act and to the Domestic Violence Act, set out in the Third Schedule.

Clause 23 of the Bill would empower the Minister to amend the First and Second Schedules.

The First Schedule would list the offences for which the Court may not impose electronic monitoring as a sentence, part of a sentence or in lieu of a sentence.

The Second Schedule would provide for the matters which the Electronic Monitoring Manager would include in a report for the Court.

The Third Schedule would make consequential amendments to certain written laws.

THE ADMINISTRATION OF JUSTICE (ELECTRONIC
MONITORING) BILL, 2011

Arrangement of Clauses

Clause

1. Short title and commencement
2. Act inconsistent with the Constitution

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3. Interpretation and application

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THE ELECTRONIC MONITORING UNIT

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11. Electronic monitoring imposed by a competent authority
12. Type of device
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15. Tampering
16. Non-compliance with a decision or breach of a condition
17. Power of the Court in respect of non-compliance with a decision or in respect of an offence

- 18. Record of non-compliance or tampering
- 19. Report may be tendered in evidence
- 20. Knowingly giving false information an offence

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- 22. Miscellaneous amendments
- 23. Amendment of the Schedules

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE

BILL

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

[, 2011]

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, 2011.

(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—

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

“Court” means a Court of competent jurisdiction;

“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;

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

“person” includes a young person or an adult, who is charged with or convicted of an offence by a Court;

“Regulations” mean Regulations made by the Minister under section 21;

“respondent” means an individual against whom a Protection Order is made under section 5 of the Domestic Violence Act; and Chap. 45:56

“young person” means an individual who is over fourteen years old and under eighteen years old.

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

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 the Electronic Monitoring Manager (“the EM Manager”) who shall be the head of the Unit, and such other suitably qualified officers and employees.

(3) The EM Manager and other members of staff of the Unit shall be engaged on contract, in accordance with guidelines for contract employment established by the Chief Personnel Officer.

5. (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 near real time tracking of the location of a person or a respondents;
- (b) report alarm notifications, signal loss and device malfunction forthwith to the EM Manager;
- (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 of all electronic monitoring spatial data, including any technological equipment necessary to read and display such information is maintained;
- (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.

6. The Government may, for the purpose of obtaining Contract for services electronic monitoring services, enter into an agreement with a company (“a service provider”) to perform any one or more of the functions of the Unit listed under section 5, and a contract entered into pursuant to this section, shall specify the terms and conditions that will govern the service to be provided.

7. (1) An officer or employee of the Unit and any individual engaged by a service provider in furtherance Confidentiality of information of section 6, 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 employee of 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

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

9. (1) Subject to subsection (2), the Court may impose Electronic monitoring imposed by the Court 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 also impose electronic monitoring as a condition of—

Chap. 4:60

(a) an order for bail made under section 12 of the Bail Act; or

Chap. 45:56

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

First Schedule

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

(4) Before making a decision under subsections (1) and (2), the Court shall request a report from the EM Manager concerning the person or respondent, which the EM Manager shall provide as soon as it is practicable.

(5) While awaiting the report of the EM Manager, the Court shall commit the person to custody.

Second Schedule

(6) In making a decision under this section, the Court shall take into account the report of the EM Manager which shall be prepared in accordance with the Second Schedule and 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.

(7) The Court shall explain to the person or respondent, 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

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

Electronic monitoring imposed by a competent authority

11. (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 EM Manager concerning the person, which the EM Manager shall provide as soon as it is practicable and the competent authority shall, where necessary, commit the person to appropriate custody while awaiting the report.

(3) In making a decision under this section, the competent authority shall take into account the report of the EM Manager which shall be prepared in accordance with the Second Schedule and 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.

(4) The competent authority shall explain to the person the meaning and effect of the decision, as well as the effect of non-compliance with it.

(5) Sections 12, 13 and 14 shall apply in respect of a decision of the competent authority as they apply in respect of a decision of the Court.

12. When the Court receives a report from the EM Manager, a decision shall be taken concerning the type of device to be fitted, on the basis of—

- (a) the recommendations contained in such report;
- (b) any Order made by the Minister under section 8; and
- (c) all the circumstances of the matter being heard.

13. Where the Court, having considered the report of the EM Manager, is of the view that the person or respondent 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 payment or partial payment or may not require any payment, as the case may be.

Terms of electronic
monitoring

14.(1) A decision made by the Court shall contain a directive at either paragraph—

- (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; and
- (c) the period of time for which the device shall be worn.

(2) The decision may also impose any other terms related to paragraphs (a), (b) or (c) contained in the Regulations.

(3) Copies of the decision of the Court made under section 9 shall be given to the person or respondent and transmitted to the Unit as soon as it is practicable after it is made.

PART IV OFFENCES

Tampering

15.(1) A person or respondent who deliberately tampers with a device or who aids or abets tampering with 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 any form of interference which 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

16.(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 EM Manager 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.

(4) Where the EM Manager or the police officer to whom subsection (3) applies, fails to take action in accordance with this section, he is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for two years.

17. (1) Where a person or respondent is brought before the Court under section 16(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 section 12 of the Bail Act;
- (b) a person against whom a decision was made for electronic monitoring 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 an Order under section 20 of the Domestic Violence Act,

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

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

(3) Circumstances that constitute an emergency shall be prescribed by the Minister in Regulations.

(4) Where the person or respondent commits an offence in addition to the breach, and the Court finds him guilty, the Court may also sentence him to the penalty specified in any written law creating the offence.

Record of
non-compliance or
tampering

18. Notwithstanding the dismissal of any matter as a result of a defence raised under section 17(2), a detailed report of the reasons given for the non-compliance or tampering 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.

Report may be
tendered in evidence

19. (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 EM Manager;
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

20. A person or respondent who is required to give information under or in pursuance of this Act and knowingly gives false information, commits an offence and is liable on summary conviction, to a fine of one hundred thousand dollars and imprisonment for two years.

PART IV MISCELLANEOUS

Regulations

21. (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,

respondents or other individuals and the evaluation of information and all other matters pertaining thereto;

- (b) conditions that are to be included in a decision pursuant to section 14;
- (c) circumstances constituting an emergency under section 17(3);
- (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; and
- (g) any other matter required to give effect to this Act.

(2) A person or respondent 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.

22. 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.

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

FIRST SCHEDULE

[Section 9(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 person, 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; and
 - (c) Knowingly negotiating to obtain a ransom.
4. Offences of a sexual nature, namely—
 - (a) Rape;
 - (b) Grievous sexual assault;
 - (c) Sexual intercourse with female under fourteen years;
 - (d) Sexual intercourse with female between fourteen and sixteen years;
 - (e) Sexual intercourse with male under sixteen years;
 - (f) Incest;
 - (g) Sexual intercourse with adopted minor, etc;
 - (h) Sexual intercourse with minor employee;
 - (i) Sexual intercourse with mentally subnormal person; and
 - (j) Buggery.
5. Drug trafficking, namely—
 - (a) Trafficking in a dangerous drug; and
 - (b) Possession of a dangerous drug for the purpose of trafficking.
6. Unlawful possession of a firearm or ammunition.

SECOND SCHEDULE

[Section 9(6)]

Matters to be included in the report of the EM Manager.

The information which the EM Manager shall supply to the Court shall be—

- (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 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 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 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 22)

CONSEQUENTIAL AMENDMENTS

FIRST COLUMN

SECOND COLUMN

The Bail Act,
Chap. 4:60

Section 12(3) of the Bail Act is amended by—

- (a) deleting the comma at the end of paragraph (c) and substituting the words “; and”;
- (b) inserting the following paragraph:
“*(d)* be subject to electronic monitoring.”;
- (c) inserting the following subsections:
“ (3A) In making a decision under subsection (3)*(d)*, the Court shall take into account—

(a) a report of the EM Manager

Act No. of 2011

based on information detailed in the Second Schedule of the Administration of Justice (Electronic Monitoring) Act, 2011;

(b) the submissions of the prosecution; and

(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, 2011.

(3D) (1) The terms of a decision made under subsection (3)(d) shall include a directive either at paragraphs (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 21 of the Administration of Justice (Electronic Monitoring) Act, 2011.

(3E) In this subsection, “electronic monitoring” means the use of electronic or telecommunication systems to track or supervise a person.”.

The Domestic Violence Act, Chap. 45:56 Section 6 of the Domestic Violence Act is amended by inserting the following subsection:

“ (3A) Where a Protection Order is granted in respect of subsection (1), the Court may also impose electronic monitoring on the respondent as a condition of the Protection Order, in accordance with the Administration of Justice (Electronic Monitoring) Act, 2011.”.

Act No. of 2011

Passed in the House of Representatives this day of , 2011.

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 members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of ,
2011.

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 in the Senate that is to say by the votes of Senators.

I confirm the above.

President of the Senate

No. 35 of 2011

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to make provision for the
implementation of a system for
electronic monitoring in Trinidad
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Received and read the

First time

Second time

Third time