

**Introduced by Senator Wright**  
(Coauthors: Assembly Members Bradford and Ma)

January 13, 2012

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An act to amend Section 1203.018 of, and to add Section 1269d to, the Penal Code, relating to electronic monitoring, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 968, as introduced, Wright. Inmates: electronic monitoring.

Existing law authorizes the board of supervisors of any county to authorize the correctional administrator, as defined, to offer a program under which only inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if the inmate is not the subject of a hold or an outstanding warrant and any one of certain conditions are met.

This bill would also authorize this program to apply to inmates eligible for bail and add as one of the conditions of eligibility for the program that the magistrate has approved the electronic monitoring release, as provided. The bill would authorize a defendant arrested without a warrant for a bailable offense and who meets certain criteria to apply, after 10 court days from the date of arraignment, for release on a reduced bail if the defendant agrees to be placed in the electronic monitoring program, and the magistrate and the correctional administrator determine that the defendant is eligible to participate in the program.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1203.018 of the Penal Code is amended  
2 to read:

3 1203.018. (a) Notwithstanding any other law, this section shall  
4 only apply to inmates *eligible for bail or* being held in lieu of bail  
5 and on no other basis.

6 (b) Notwithstanding any other law, the board of supervisors of  
7 any county may authorize the correctional administrator, as defined  
8 in paragraph (1) of subdivision (k), to offer a program under which  
9 inmates *eligible for bail or* being held in lieu of bail in a county  
10 jail or other county correctional facility may participate in an  
11 electronic monitoring program if the conditions specified in  
12 subdivision (c) are met.

13 (c) (1) In order to qualify for participation in an electronic  
14 monitoring program pursuant to this section, the inmate must be  
15 an inmate with no holds or outstanding warrants to whom one of  
16 the following circumstances applies:

17 (A) The inmate has been held in custody for at least 30 calendar  
18 days from the date of arraignment pending disposition of only  
19 misdemeanor charges.

20 (B) The inmate has been held in custody pending disposition  
21 of charges for at least 60 calendar days from the date of  
22 arraignment.

23 (C) *A magistrate has approved the electronic monitoring release*  
24 *pursuant to Section 1269d.*

25 (2) All participants shall be subject to discretionary review for  
26 eligibility and compliance by the correctional administrator  
27 consistent with this section.

28 (d) The board of supervisors, after consulting with the sheriff  
29 and district attorney, may prescribe reasonable rules and regulations  
30 under which an electronic monitoring program pursuant to this  
31 section may operate. As a condition of participation in the  
32 electronic monitoring program, the participant shall give his or  
33 her consent in writing to participate and shall agree in writing to  
34 comply with the rules and regulations of the program, including,  
35 but not limited to, all of the following:

36 (1) The participant shall remain within the interior premises of  
37 his or her residence during the hours designated by the correctional  
38 administrator.

1 (2) The participant shall admit any person or agent designated  
2 by the correctional administrator into his or her residence at any  
3 time for purposes of verifying the participant's compliance with  
4 the conditions of his or her detention.

5 (3) The electronic monitoring may include global positioning  
6 system devices or other supervising devices for the purpose of  
7 helping to verify the participant's compliance with the rules and  
8 regulations of the electronic monitoring program. The electronic  
9 devices shall not be used to eavesdrop or record any conversation,  
10 except a conversation between the participant and the person  
11 supervising the participant to be used solely for the purposes of  
12 voice identification.

13 (4) The correctional administrator in charge of the county  
14 correctional facility from which the participant was released may,  
15 without further order of the court, immediately retake the person  
16 into custody if the electronic monitoring or supervising devices  
17 are unable for any reason to properly perform their function at the  
18 designated place of home detention, if the person fails to remain  
19 within the place of home detention as stipulated in the agreement,  
20 if the person willfully fails to pay fees to the provider of electronic  
21 home detention services, as stipulated in the agreement, subsequent  
22 to the written notification of the participant that the payment has  
23 not been received and that return to custody may result, or if the  
24 person for any other reason no longer meets the established criteria  
25 under this section.

26 (5) A copy of the signed consent to participate and a copy of  
27 the agreement to comply with the rules and regulations shall be  
28 provided to the participant and a copy shall be retained by the  
29 correctional administrator.

30 (e) The rules and regulations and administrative policy of the  
31 program shall be reviewed on an annual basis by the county board  
32 of supervisors and the correctional administrator. The rules and  
33 regulations shall be given to every participant.

34 (f) Whenever the peace officer supervising a participant has  
35 reasonable cause to believe that the participant is not complying  
36 with the rules or conditions of the program, or that the electronic  
37 monitoring devices are unable to function properly in the  
38 designated place of confinement, the peace officer may, under  
39 general or specific authorization of the correctional administrator,  
40 and without a warrant of arrest, retake the person into custody.

1 (g) (1) Nothing in this section shall be construed to require the  
2 correctional administrator to allow a person to participate in this  
3 program if it appears from the record that the person has not  
4 satisfactorily complied with reasonable rules and regulations while  
5 in custody. A person shall be eligible for participation in an  
6 electronic monitoring program only if the correctional administrator  
7 concludes that the person meets the criteria for release established  
8 under this section and that the person’s participation is consistent  
9 with any reasonable rules and regulations prescribed by the board  
10 of supervisors or the administrative policy of the correctional  
11 administrator.

12 (2) The correctional administrator, or his or her designee, shall  
13 have discretionary authority consistent with this section to permit  
14 program participation as an alternative to physical custody. All  
15 persons approved by the correctional administrator to participate  
16 in the electronic monitoring program pursuant to subdivision (c)  
17 who are denied participation and all persons removed from program  
18 participation shall be notified in writing of the specific reasons for  
19 the denial or removal. The notice of denial or removal shall include  
20 the participant’s appeal rights, as established by program  
21 administrative policy.

22 (h) The correctional administrator may permit electronic  
23 monitoring program participants to seek and retain employment  
24 in the community, attend psychological counseling sessions or  
25 educational or vocational training classes, or seek medical and  
26 dental assistance.

27 (i) Willful failure of the program participant to return to the  
28 place of home detention prior to the expiration of any period of  
29 time during which he or she is authorized to be away from the  
30 place of home detention pursuant to this section and unauthorized  
31 departures from the place of home detention is punishable pursuant  
32 to Section 4532.

33 (j) The board of supervisors may prescribe a program  
34 administrative fee to be paid by each electronic monitoring  
35 participant.

36 (k) For purposes of this section, the following terms have the  
37 following meanings:

38 (1) “Correctional administrator” means the sheriff, probation  
39 officer, or director of the county department of corrections.

1 (2) “Electronic monitoring program” includes, but is not limited  
2 to, home detention programs, work furlough programs, and work  
3 release programs.

4 (l) Notwithstanding any other law, upon request of a local law  
5 enforcement agency with jurisdiction over the location where a  
6 participant in an electronic monitoring program is placed, the  
7 correctional administrator shall provide the following information  
8 regarding participants in the electronic monitoring program:

9 (1) The participant’s name, address, and date of birth.

10 (2) The offense or offenses alleged to have been committed by  
11 the participant.

12 (3) The period of time the participant will be placed on home  
13 detention.

14 (4) Whether the participant successfully completed the  
15 prescribed period of home detention or was returned to a county  
16 correctional facility, and if the person was returned to a county  
17 correctional facility, the reason for the return.

18 (5) The gender and ethnicity of the participant.

19 (6) *If released pursuant to Section 1269d, the name, address,*  
20 *and contact information of any bail agent or surety.*

21 (m) Any information received by a law enforcement agency  
22 pursuant to subdivision (l) shall be used only for the purpose of  
23 monitoring the impact of home electronic monitoring programs in  
24 the community.

25 (n) It is the intent of the Legislature that electronic monitoring  
26 programs established under this section maintain the highest public  
27 confidence, credibility, and public safety. In the furtherance of  
28 these standards, the following shall apply:

29 (1) The correctional administrator, with the approval of the  
30 board of supervisors, may administer an electronic monitoring  
31 program as provided in this section pursuant to written contracts  
32 with appropriate public or private agencies or entities to provide  
33 specified program services. No public or private agency or entity  
34 may operate a home detention program pursuant to this section in  
35 any county without a written contract with that county’s  
36 correctional administrator. No public or private agency or entity  
37 entering into a contract pursuant to this subdivision may itself  
38 employ any person who is in the electronic monitoring program.

1 (2) Program participants shall undergo the normal booking  
2 process for arrestees entering the jail. All electronic monitoring  
3 program participants shall be supervised.

4 (3) (A) All privately operated electronic monitoring programs  
5 shall be under the jurisdiction of, and subject to the terms and  
6 conditions of the contract entered into with, the correctional  
7 administrator.

8 (B) Each contract specified in subparagraph (A) shall include,  
9 but not be limited to, all of the following:

10 (i) A provision whereby the private agency or entity agrees to  
11 operate in compliance with any available standards and all state  
12 and county laws applicable to the operation of electronic  
13 monitoring programs and the supervision of offenders in an  
14 electronic monitoring program.

15 (ii) A provision that clearly defines areas of respective  
16 responsibility and liability of the county and the private agency or  
17 entity.

18 (iii) A provision that requires the private agency or entity to  
19 demonstrate evidence of financial responsibility, submitted to and  
20 approved by the board of supervisors, in amounts and under  
21 conditions sufficient to fully indemnify the county for reasonably  
22 foreseeable public liability, including legal defense costs that may  
23 arise from, or be proximately caused by, acts or omissions of the  
24 contractor.

25 (iv) A provision that requires the private agency or entity to  
26 provide evidence of financial responsibility, such as certificates  
27 of insurance or copies of insurance policies, prior to commencing  
28 any operations pursuant to the contract or at any time requested  
29 by the board of supervisors or correctional administrator.

30 (v) A provision that requires an annual review by the  
31 correctional administrator to ensure compliance with requirements  
32 set by the board of supervisors and for adjustment of the financial  
33 responsibility requirements if warranted by caseload changes or  
34 other factors.

35 (vi) A provision that permits the correctional administrator to  
36 immediately terminate the contract with a private agency or entity  
37 at any time that the contractor fails to demonstrate evidence of  
38 financial responsibility.

1 (C) All privately operated electronic monitoring programs shall  
2 comply with all applicable ordinances and regulations specified  
3 in subdivision (a) of Section 1208.

4 (D) The board of supervisors, the correctional administrator,  
5 and the designee of the correctional administrator shall comply  
6 with Section 1090 of the Government Code in the consideration,  
7 making, and execution of contracts pursuant to this section.

8 (E) The failure of the private agency or entity to comply with  
9 state or county laws or with the standards established by the  
10 contract with the correctional administrator shall constitute cause  
11 to terminate the contract.

12 (F) Upon the discovery that a private agency or entity with  
13 which there is a contract is not in compliance with this paragraph,  
14 the correctional administrator shall give 60 days' notice to the  
15 director of the private agency or entity that the contract may be  
16 canceled if the specified deficiencies are not corrected.

17 (G) Shorter notice may be given or the contract may be canceled  
18 without notice whenever a serious threat to public safety is present  
19 because the private agency or entity has failed to comply with this  
20 section.

21 (H) For purposes of this section, "evidence of financial  
22 responsibility" may include, but is not limited to, certified copies  
23 of any of the following:

- 24 (i) A current liability insurance policy.
- 25 (ii) A current errors and omissions insurance policy.
- 26 (iii) A surety bond.

27 SEC. 2. Section 1269d is added to the Penal Code, to read:

28 1269d. (a) Notwithstanding any other provision of law, if a  
29 defendant is arrested without a warrant for a bailable offense and  
30 meets the criteria specified in paragraph (1) of subdivision (c) of  
31 Section 1203.018, he or she may, either personally or through his  
32 or her attorney, friend, or family member, make an application to  
33 the magistrate after 10 court days from the date of arraignment for  
34 release on bail reduced by up to 75 percent of the amount of the  
35 defendant's bail.

36 (b) A court may reduce the defendant's bail by up to 75 percent  
37 pursuant to this section only if the defendant is placed in an  
38 electronic monitoring program authorized by a county board of  
39 supervisors pursuant to Section 1203.018, and the court and  
40 correctional administrator make determinations that the defendant

1 is eligible to participate in an electronic monitoring program as  
2 defined in Section 1203.018.

3 SEC. 3. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

7 In order to implement prison realignment, reduce prison costs,  
8 and clarify those who are eligible for release for electronic  
9 monitoring as soon as possible, it is necessary that this act take  
10 effect immediately.