CHAPTER 12-67
HOME DETENTION AND MONITORING FOR CERTAIN OFFENDERS

12-67-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility, as defined in section 12-44.1-01.
2. "Approved electronic monitoring device" means a global positioning system device or other electronic monitoring device approved by the department or the administrator which is primarily intended to actively or passively monitor, record, and transmit confirmation of a participant's location or the participant's presence or nonpresence in the home.
3. "Court" means the district or municipal court having criminal or juvenile jurisdiction over a participant in electronic home detention or global positioning system monitoring.
4. "Department" means the department of corrections and rehabilitation.
5. "Home detention" means the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court, the administrator, or the department.
6. "Participant" means an adult or juvenile offender placed into an electronic monitoring program.

12-67-02. Application.

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility. Except in cases in which the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the administrator of the jail or correctional facility shall make the decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.
2. Electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:
   a. Pretrial or preadjudicatory detention.
   b. Probation.
   c. Community corrections approved by the court.
   d. Parole.
   e. Work release under chapter 12-44.1 or approved by the parole board.
   f. Institutional release approved by the court or the parole board.
   g. Sex offender containment.
3. If not otherwise prohibited by law, the administrator may use electronic home detention or global positioning system monitoring for an offender if required due to medical needs of the offender or to prevent overcrowding in the county jail or regional correctional facility.
4. If the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the court order must expressly prohibit electronic home detention and global positioning system monitoring.
5. Notwithstanding any other provision of law, an offender who has pled guilty or nolo contendere to, or has been found guilty of a felony under section 14-09-22, is not eligible for electronic home detention or home-based global positioning system monitoring if a minor is present in the home.

12-67-03. Program description - Fees.

1. Subject to the availability of funding, the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.
2. A participant may be required to remain within the interior premises or within the property boundaries of the participant's residence at all times during the hours designated by the court, the administrator, the parole board, or the department. Instances of approved absences from the residence may include:
   a. Work or employment approved by the court, the administrator, the parole board, or the department or traveling to or from approved employment;
   b. Unemployment and seeking employment approved for the participant by the court, the administrator, the parole board, or the department;
   c. Medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court, the administrator, the parole board, or the department;
   d. Attendance at an educational institution or a program approved for the participant by the court, the administrator, the parole board, or the department;
   e. Attendance at a regularly scheduled religious service at a place of worship;
   f. Participation in a community work release or community service program approved for the participant by the court, the administrator, the parole board, or the department; or
   g. For another compelling reason consistent with the public interest, as approved by the court, the administrator, the parole board, or the department.
3. A participant shall admit any individual or agent designated by the court, the administrator, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.
4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the administrator, the parole board, or the department to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the administrator, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
6. A participant shall maintain the following:
   a. A monitoring device in the participant's residence or on the participant's person, or both; and
   b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.
7. A participant shall obtain approval from the court, the administrator, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.
8. The court, the administrator, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.
9. The court or the administrator shall assess to each participant the actual cost of the electronic monitoring. The court or the administrator also shall assess to each participant an administration fee of not more than five dollars per day which is to be used to reimburse the sheriff or other law enforcement agency for the cost of electronic monitoring enforcement services.
10. A participant shall abide by other conditions as set by the court, the administrator, the parole board, or the department.

11. An approved electronic monitoring device may be used to record a conversation between a participant and the monitoring device or the participant and the individual supervising the participant solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

12-67-04. Consent of the participant.

Before electronic home detention or global positioning system monitoring may be used, the court, the administrator, the parole board, or the department shall inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.