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Dean F. Growdon
Sheriff - Coroner

To: Lassen County Board of Supervisors

From: Dean F. Growdon

Agenda Date: March 24, 2020

Subject: Adult pre-trial Electronic Monitoring Program

Recommendation:

That the Board of Supervisors authorizes the Sheriff (Correctional Administrator) to operate an Electronic Monitoring Program for inmates being held in lieu of bail, and approve the rules included in the attached "Electronic Monitoring Policy".

Discussion:

The Sheriff's Office has been operating an Electronic Monitoring Program for sentenced offenders since 2011. In 2011, the Lassen County Board of Supervisors adopted rules for this program pursuant to section 1203.016 of the California Penal Code. The Electronic Monitoring Program has proven valuable in managing the sentenced jail population.

California Penal Code Section 1203.018 authorizes the Correctional Administrator (Sheriff) to operate an Electronic Monitoring Program if authorized to do so by the Board of Supervisors. It also authorizes the Board of Supervisors to prescribe reasonable rules after consultation with the Sheriff and District Attorney. This code section also includes eligibility standards, and rules for the program.

The Sheriff's Office has created a draft policy related to the proposed pre-trial release program. These new standards were included in the existing "Electronic Monitoring Policy" contained within the Lassen County Jail Procedural Manual (attached).

The addition of this new program will provide the Sheriff with additional flexibility in managing the adult offender population, particularly during periods of overcrowding, and during emergencies.

Fiscal Impact:

Electronic monitoring rate averages \$5.43 per day, per inmate. The County bears the cost for inmates determined to be indigent.



PENAL CODE - PEN

PART 2. OF CRIMINAL PROCEDURE [681 - 1620] (*Part 2 enacted 1872.)*

TITLE 8. OF JUDGMENT AND EXECUTION [1191 - 1234.5] (*Title 8 enacted 1872.)*

CHAPTER 1. The Judgment [1191 - 1210.6] (*Chapter 1 enacted 1872.)*

1203.018. (a) Notwithstanding any other law, this section shall only apply to inmates being held in lieu of bail and on no other basis.

(b) Notwithstanding any other law, the board of supervisors of any county may authorize the correctional administrator, as defined in paragraph (1) of subdivision (k), to offer a program under which 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 conditions specified in subdivision (c) are met.

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

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

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

(C) The inmate is appropriate for the program based on a determination by the correctional administrator that the inmate's participation would be consistent with the public safety interests of the community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

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

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

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

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

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

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

(5) The gender and ethnicity of the participant.

(m) Notwithstanding any other law, upon request of a local law enforcement agency with jurisdiction over the location where a participant in an electronic monitoring program is placed, the correctional administrator may, in his or her discretion and solely for investigatory purposes, provide current and historical GPS coordinates, if available.

(n) A law enforcement agency that does not have the primary responsibility to supervise participants in the electronic monitoring program that receives information pursuant to subdivision (l) shall not use the information to conduct enforcement actions based on administrative violations of the home detention program. An agency that has knowledge that the subject in a criminal investigation is a participant in an electronic monitoring program shall make reasonable efforts to notify the supervising agency prior to serving a warrant or taking any law enforcement action against a participant in an electronic monitoring program.

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

(1) The correctional administrator, with the approval of the board of supervisors, may administer an electronic monitoring program as provided in this section pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. A public or private agency or entity shall not operate a home detention program pursuant to this section in any county without a written contract with that county's correctional administrator. A public or private agency or entity entering into a contract pursuant to this subdivision shall not itself employ any person who is in the electronic monitoring program.

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

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

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

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

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

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted to and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county

for reasonably foreseeable public liability, including legal defense costs that may arise from, or be proximately caused by, acts or omissions of the contractor.

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

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

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

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

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

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

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

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

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

(i) A current liability insurance policy.

(ii) A current errors and omissions insurance policy.

(iii) A surety bond.

(Amended by Stats. 2014, Ch. 612, Sec. 4. (AB 2499) Effective January 1, 2015.)

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Home Electronic Monitoring:

Purpose:

To provide written criteria and guidelines for the management and operation of Lassen County Sheriff's Home Electronic Monitoring Program.

Statutory Authority: Sentenced Inmates

- **Correctional Administrator**
 - Pursuant to California Government code Section 26605, the Sheriff has the sole and exclusive authority to keep the county jail and the prisoners in it. As such, the Sheriff is the facility administrator of the Lassen County Jail as defined in the California Code of Regulations, Title 15, Division I, Section 1006; definition of facility administrator. The Sheriff is also the designated correctional administrator for purposes of administering electronic monitoring program for county jail inmates.
- **Program Rules**
 - Pursuant to California Penal Code Section 1203.016: The board of supervisors, in consultation with the correctional administrator, may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply or, for involuntary participation, the inmate shall be informed in writing that he or she shall comply, with the rules and regulations of the program, including, but not limited to, the following rules:
 - The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.
 - The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.
 - The participant shall agree to use the electronic monitoring, which may include global positioning system devices or other supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.
 - The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the

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participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.

- **Retaking Program Participants (1203.016 PC)**

- Whenever any peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

- **Acceptance or Denial for Electronic Monitoring (1203.016 PC)**

- Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

- **Approval and Availability of Program Rules (1203.016 PC)**

- The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

- **Acceptance/Denial for Program Eligibility (1203.016 PC)**

- The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody. All persons referred or recommended by the court to participate in the home detention program pursuant to subdivision (e) who are denied participation or all persons removed from program participation shall be notified in writing of the specific reason for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.
 - "(e) The court may recommend or refer a person to the correctional administrator for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program."

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- **Authorized Activities/ Unauthorized Departures (1203.016 PC)**

- The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to place of home detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this section and authorized departures from the place of home detention are punishable as provided in Section 4532.

- **Program Fees (1203.016 PC)**

- The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2

Statutory Authority: Pre-Trial Inmates

- **Correctional Administrator**

- Pursuant to California Government code Section 26605, the Sheriff has the sole and exclusive authority to keep the county jail and the prisoners in it. As such, the Sheriff is the facility administrator of the Lassen County Jail as defined in the California Code of Regulations, Title 15, Division I, Section 1006; definition of facility administrator. The Sheriff is also the designated correctional administrator for purposes of administering electronic monitoring program for county jail inmates.

- **Program Rules**

- Pursuant to California Penal Code Section 1203.018: The board of supervisors, in consultation with the Sheriff and District Attorney, may prescribe reasonable rules and regulations under which a home detention program may operate.
- Eligibility: In order to qualify for participation in an electronic monitoring program pursuant to this section, the inmate shall be an inmate with no holds or outstanding warrants to whom one of the following circumstances applies:
 - (A) The inmate has been held in custody for at least 30 calendar days from the date of arraignment pending disposition of only misdemeanor charges.
 - (B) The inmate has been held in custody pending disposition of charges for at least 60 calendar days from the date of arraignment.
 - (C) The inmate is appropriate for the program based on a determination by the correctional administrator that the inmate's participation would be consistent with the public safety interests of the community.

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- As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply or, for involuntary participation, the inmate shall be informed in writing that he or she shall comply, with the rules and regulations of the program, including, but not limited to, the following rules:
 - The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.
 - The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.
 - The participant shall agree to use the electronic monitoring, which may include global positioning system devices or other supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.
 - The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.
- **Retaking Program Participants (1203.016(4) PC)**
 - Whenever any peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.
- **Acceptance or Denial for Electronic Monitoring**
 - Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if

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the correctional administrator concludes that the person meets the criteria for release established under this section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

- **Approval and Availability of Program Rules**

- The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

- **Acceptance/Denial for Program Eligibility**

- The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody

- **Authorized Activities/ Unauthorized Departures (1203.016 PC)**

- The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to place of home detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this section and authorized departures from the place of home detention are punishable as provided in Section 4532.

- **Program Fees**

- The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2

Policy:

The Sheriff's goal is to have every potential alternative to custody applicant undergo an objective screening process to maximize program participation, when appropriate. However, the Sheriff's primary responsibility is to provide for public safety. Considering the program goal in conjunction with the Sheriff's responsibilities; the Sheriff reserves the right to reject any application for alternative custody programs if the Sheriff believes an applicant poses a risk to public safety. Providing for public safety is the overall guiding principle upon which all alternative to custody decisions will be based.

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The Sheriff will utilize an evidence based risk assessment tool to assist in determining program eligibility. The application process and participant screening guidelines are contained in the Alternatives to Custody Policy.

Electronic Monitoring Overview and Guidelines:

- The Electronic Monitoring (EM) Program is a program under which a person committed to the County Jail may participate in voluntary home detention program in which one day of participation will be in lieu of one day of confinement.
 - Criteria for the EM program consists of; a level of supervision within the County higher than those inmates on other alternative to incarceration programs.
 - The Sheriff's classification committee will be responsible for the screening/interview selection process and submit advisory findings to the Facility Commander for final determination of eligibility to participate.
 - Those inmates deemed ineligible may appeal utilizing the county jail inmate grievance procedures.
 - Inmates on the EM program who refuse to follow the rules and regulations will be removed from the EM program and may be subject to criminal prosecution or discipline in accordance to Title 15 and Jail policy and procedures.
 - The participant shall remain within the interior of their home during the hours designated.
 - As a condition of participating in the EM program, a person shall give his/her consent in writing and shall agree to comply with the rules and regulations.
- Program Requirements: Inmates volunteering to participate in the EM program will be responsible for completing and maintaining administrative requirements as outlined below. All participants must:
 - Meet the eligibility criteria as defined in policy and procedures
 - Agree to comply with program rules
 - Admit any person or agent designated by the Sheriff into his/her residence at any time for purpose of verifying compliance with the rules and regulations of the EM program.
 - Pay all fees related to the program
 - Must not have any pending criminal charges within the State of California
 - Provide valid driver's license (if necessary)
 - Provide proof of vehicle insurance (if necessary)
 - If the participant is unable to be properly licensed and insured, then the participant must make arrangements to ride with another driver who will provide proof of license and insurance (if necessary).

Charges for Participation:

Home Electronic Monitoring Program candidates will pay for the cost of the HEM program to the provider of the electronic detention services, as stipulate din the application. Failure to pay shall result in immediate return to custody at the Lassen County Jail.

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Supervision:

To ensure that participants comply with program requirements, the Sheriff's Office will administer a supervision/compliance program. This program will include members of both the custody and patrol divisions of the Sheriff's Office. Primary supervision will begin with the Inmate Services Officer (ISO). The ISO will work in conjunction with other correctional officers, plus the Sheriff's dispatch center and patrol deputies to monitor the program.