

BOARD of SUPERVISORS



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## MEMORANDUM

### NEIGHBORHOOD SERVICES & SAFETY COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor David Campos, Chair  
Neighborhood Services & Safety Committee

FROM: Derek Evans, Assistant Committee Clerk

DATE: July 18, 2014

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, July 22, 2014

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, July 22, 2014. This item was acted upon at the Neighborhood Service and Safety Committee Regular Meeting on Thursday, July 17, 2014, at 10:00 a.m., by the votes indicated.

**Item No. 4**                      **File No. 130650**

Ordinance amending the Administrative Code to expand the category of jail inmates eligible for the Home Detention Program; and authorizing the Sheriff to implement an Electronic Monitoring Program to pretrial detainees being held in lieu of bail.

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor David Campos - Aye  
Supervisor Eric Mar - Absent  
Supervisor Norman Yee - Aye

Cc: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Rick Caldeira, Deputy Legislative Clerk  
Jon Givner, Deputy City Attorney

FILE NO. 130650

ORDINANCE NO.

1 [Administrative Code - Home Detention and Electronic Monitoring Program]

2  
3 **Ordinance amending the Administrative Code to expand the category of jail inmates**  
4 **eligible for the Home Detention Program; and authorize the Sheriff to implement an**  
5 **Electronic Monitoring Program to pretrial detainees being held in lieu of bail.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are *strike-through italics Times New Roman*.  
8 Board amendment additions are double-underlined;  
9 Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. Findings.

12 As of 2008, approximately 2.3 million people were behind bars in the United States,  
13 equivalent to about one in every 100 adults. This ratio represents a 300 percent increase in  
14 the prison population from 1980, when half a million Americans were behind bars. With lower-  
15 level offenders accounting for a significant portion of this growth, California spends 10 percent  
16 of its general revenue on prisons compared to 7 percent on its higher education system. The  
17 social cost to minority communities, a large percentage of whose young men are now locked  
18 up, is staggering. According to the Pew Research Center on the States, incarceration  
19 negatively impacts the economic mobility of former inmates. For example, "serving time  
20 reduces hourly wages for men by approximately 11%, annual employment by 9 weeks, and  
21 annual earnings by 40%." Since minority populations disproportionately account for a high  
22 percentage of the prison population, high incarceration rates negatively impact minority  
23 communities. Worse, the impacts of incarcerated parents on children are lasting. "Children  
24 with fathers who have been incarcerated are significantly more likely than other children to be  
25 expelled or suspended from school and family income averaged over the years a father is

1 incarcerated is 22 percent lower than family income was the year before a father is  
2 incarcerated.”

3 By removing low-level offenders from jails and prisons and putting them under house  
4 arrest, local, state and federal governments could dramatically reduce their spending on  
5 incarceration. At the same time it would allow families to remain intact, and allow offenders to  
6 obtain treatment and employment, pay restitution, support their communities as a whole and  
7 reduce their likelihood of reoffending.

8 In April 2011, Governor Brown signed AB109, which made fundamental changes to the  
9 costly, ineffective and unsafe “revolving door” incarceration of low level offenders. AB 109  
10 added California Penal Code Section 1203.018, which permits the Board of Supervisors to  
11 authorize the “correctional administrator”, defined in that statute as the Sheriff, Probation  
12 Officer, or Director of the Department of Corrections, in those counties having such a  
13 department, to allow inmates being held in county jail in lieu of bail to be released on  
14 electronic monitoring after 30 days for those awaiting trial on misdemeanor charges and 60  
15 days for those facing felony charges. The Board of Supervisors, after consulting with the  
16 Sheriff and the District Attorney, may prescribe reasonable rules and regulations under which  
17 an electronic monitoring program authorized by Penal Code Section 1203.018 may operate.

18 Currently there are over 500 low-level offenders in San Francisco County Jails awaiting  
19 trial or disposition. Many of these offenders have the capability to work and support their  
20 families; others are in need of rehabilitation for substance abuse or mental health issues,  
21 which can better be addressed in noncustodial settings – increasing the likelihood of a  
22 successful reentry, lowering the incidence of recidivism, and improving public safety in our  
23 communities.

24 Section 2. The Administrative Code is hereby amended by revising Section 13.63, and  
25 adding section 13.64, to read as follows:

1           **SEC. 13.63. HOME DETENTION PROGRAM FOR SENTENCED INMATES.**

2           (a) The Sheriff is authorized to ~~offer~~ implement a Home Detention Program as specified  
3 in Section 1203.016 of the California Penal Code, in which ~~minimum security prisoners and low-~~  
4 ~~risk offenders~~ inmates committed to the County Jail or other County correctional facility or  
5 inmates participating in a Work Furlough program may voluntarily participate ~~or involuntarily~~  
6 ~~be placed~~ in a Home Detention Program during their sentence in lieu of confinement in ~~the~~ a  
7 County Jail or other County correctional facility.

8           (b) The Sheriff may administer the Home Detention Program authorized in subsection (a)  
9 pursuant to written contracts with one or more appropriate public or private agencies or entities,  
10 subject to the requirements for contracting out these services set forth in Penal Code Section 1203.016  
11 and in accordance with the County laws and policies governing procurement of personal services.

12           (c) The Sheriff shall submit a report regarding the Home Detention Program authorized  
13 in subsection (a) to the Board of Supervisors within one year of the effective date of this  
14 ordinance, and thereafter on an annual basis.

15           **SEC. 13.64. ELECTRONIC MONITORING PROGRAM IN LIEU OF BAIL.**

16           (a) The Sheriff is authorized to offer an Electronic Monitoring Program as specified in Section  
17 1203.018 of the California Penal Code, to (1) inmates held in custody solely on misdemeanor  
18 charges who have been being held in custody in lieu of bail in a County Jail or other County  
19 correctional facility for at least 30 days from the date of arraignment and (2) inmates charged  
20 with offenses eligible for sentencing pursuant to Penal Code section 1170(h) who have been  
21 held custody in lieu of bail for at least 60 days from the date of arraignment . The Sheriff shall  
22 provide the District Attorney with written notice prior to placing any inmate on electronic  
23 monitoring in lieu of bail pursuant to Section 1203.018 and this Section. Within two court days  
24 of receiving this notice from the Sheriff, the District Attorney shall notify the Sheriff in writing of  
25 any objection to the placement of the inmate on electronic monitoring. If such objection is

1 lodged, the Sheriff shall request a hearing before the Superior Court regarding the placement,  
2 and notify the District Attorney and counsel for the inmate. If the District Attorney does not  
3 notify the Sheriff of an objection to the placement on electronic monitoring, the Sheriff may  
4 place the inmate on electronic monitoring. If, after the hearing, the Superior Court declines to  
5 restrict or prevent the placement, the Sheriff may place the inmate on electronic monitoring in  
6 lieu of bail pursuant to Section 1203.108 and this Section.

7 *(b) The Sheriff may administer the Electronic Monitoring Program authorized in subsection (a)*  
8 *pursuant to written contracts with one or more appropriate public or private agencies or entities,*  
9 *subject to the requirements for contracting out these services set forth in Penal Code Sections 1203.018*  
10 *and in accordance with the County laws and policies governing procurement of personal services.*

11 (c) The Sheriff shall submit a report regarding the Electronic Monitoring Program  
12 authorized in subsection (a) to the Board of Supervisors within one year of the effective date  
13 of this ordinance, and thereafter on an annual basis.

14 Section 3. Effective Date. This ordinance shall become effective 30 days after  
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
17 of Supervisors overrides the Mayor’s veto of the ordinance.


18 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
22 additions, and Board amendment deletions in accordance with the “Note” that appears under  
23 the official title of the ordinance.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
ANDREW SHEN  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Home Detention and Electronic Monitoring Program]

**Ordinance amending the Administrative Code to expand the category of jail inmates eligible for the Home Detention Program; and authorize the Sheriff to implement an Electronic Monitoring Program to pretrial detainees being held in lieu of bail.**

Existing Law

Local law authorizes the Sheriff to operate a "Home Detention Program" for inmates sentenced to county jail or participating in the Work Furlough program as specified in California Penal Code Section 1203.016, subject to the inmate's consent to the program's conditions. Participation is limited to minimum security and low risk offenders. Section 1203.016 requires that all inmates participating must submit to electronic monitoring.

Amendments to Current Law

For sentenced inmates and those on work furlough, the ordinance would remove the requirement that participants be minimum security and low risk offenders.

For pretrial detainees being held in lieu of bail, the ordinance would authorize the Sheriff to operate an "Electronic Monitoring Program," as permitted under Penal Code Section 1203.018, for release of such detainees. To participate, detainees would need to consent to the placement and the program's conditions. The ordinance would require that the Sheriff notify the District Attorney prior to any placement of pretrial detainees, and, if the District Attorney objected, require that the Sheriff request a hearing in Superior Court regarding the placement.

Background Information

With approval from the Board of Supervisors, state law permits the Sheriff to release inmates on electronic monitoring in lieu of holding them in jail. Until recently, state law limited participation in this "Home Detention Program" to sentenced inmates who consented to participate and who were "minimum security and low risk offenders." In the event of jail overcrowding state law permitted eligibility to be expanded to any misdemeanor inmate, whether participating voluntarily or not.

Effective October 2011, "Realignment" legislation (1) removed these limitations on participation for inmates serving time in jail or in the Work Furlough Program and (2) provided

AMENDED IN COMMITTEE

7/17/14

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that with Board of Supervisors approval, Sheriffs can release pretrial detainees being held in lieu of bail if they consent to participate in an Electronic Monitoring Program.<sup>1</sup>

State law requires participants in either program to: (1) remain inside their residence during the hours designated by the Sheriff; (2) allow persons designated by the Sheriff into the residence to verify compliance; and (3) submit to electronic monitoring. If participants violate the conditions or the electronic monitoring equipment malfunctions, the Sheriff may immediately take them back into custody.

In addition, to be released on electronic monitoring in lieu of bail, a pretrial detainee must (1) have no holds or outstanding warrants and (2) either (a) have been in custody for 30 days since arraignment on misdemeanor charges, or 60 days since arraignment on felony charges, or (b) have been determined by the Sheriff to be appropriate for the program because the detainee's participation would be consistent with public safety. The Sheriff is not required to place any inmate in the program who has not satisfactorily complied with rules and regulations while in custody.

In addition to state law requirements for participation, the Board of Supervisors may adopt reasonable rules and regulations for operation of the programs, and may prescribe an administrative fee for participation. The Sheriff may also adopt administrative rules for program participation.

With Board approval, the Sheriff may administer the programs pursuant to written contracts with appropriate public or private agencies.

The ordinance was first introduced on or about June 7, 2013. A substitute ordinance was introduced on or about January 7, 2014. At the February 6, 2014 hearing before the Board of Supervisors' Neighborhood Services and Safety Committee, the Committee requested amendments to the ordinance to require that placement of sentenced inmates on electronic monitoring be limited to those that consent. In addition, the Committee requested that electronic monitoring in lieu of bail be offered only to inmates charged with low level offenses. Finally, the Committee requested that the ordinance require that the Superior Court approve placement of inmates on electronic monitoring in lieu of bail if the District Attorney objected to any placement. On July 17, 2014, the Committee further amended the ordinance to require the Sheriff to submit annual reports to the Board of Supervisors regarding the Home Detection and Electronic Monitoring programs.

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<sup>1</sup> State law authorizes these programs for sentenced inmates and pretrial detainees in separate statutes. The program for sentenced inmates is referred to as a "Home Detention Program" with electronic monitoring being one of the mandated conditions. Penal Code § 1203.016. The program for pretrial detainees is referred to as an "Electronic Monitoring Program". Penal Code § 1203.018