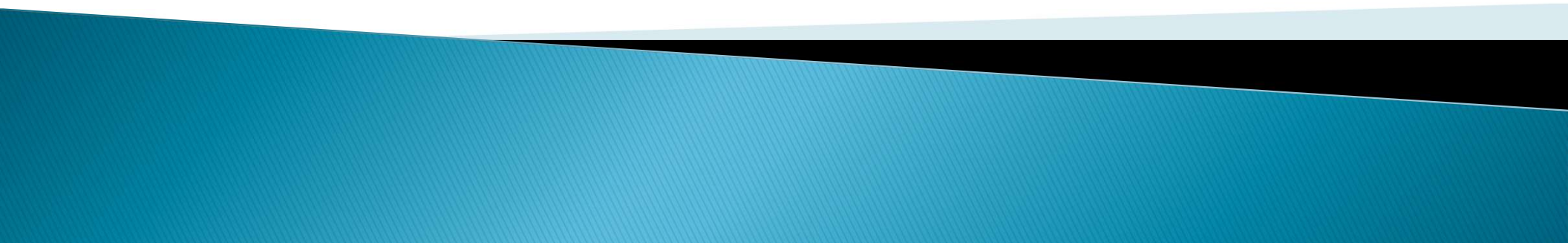


SLED Standards for Electronic Monitoring in South Carolina

Adam L. Whitsett
SLED General Counsel



SLED's Mandate

With the passage of **2023 Act No. 83 (H.3532)**, the South Carolina Legislature tasked SLED with developing standards for the use and approval of **active electronic monitoring devices**, and a process to certify **electronic monitoring agencies**, including law enforcement agencies, electronic monitoring companies, bondsmen, and bonding companies.



Applying for Certification

- ▶ SLED developed and published the first set of Standards on November 1, 2023.
- ▶ SLED also created and published an application form along with sample template documents.
- ▶ SLED has issued some initial guidance on the application process.

<https://www.sled.sc.gov>



Approved Electronic Monitoring Company

Approved electronic monitoring agency is any

- ▶ law enforcement agency,
- ▶ licensed bondsman or bonding company, or
- ▶ electronic monitoring company

that is certified by SLED to supply, maintain, and monitor electronic monitoring devices to participants ordered by the court to wear electronic monitoring devices under the provisions of this section. S.C. Code Ann. § 17-15-35(A)(2).



Approved Electronic Monitoring Device

“Approved active electronic monitoring device” and “monitoring device” means a body worn or non-body worn device or mobile phone application approved by the South Carolina Law Enforcement Division which records or transmits oral or wire communications or an auditory sound, visual images, or information regarding the person’s location and activities, that must verify live biometric, photographic, or videographic identification information, and that timely records and reports the person’s location.



Criteria for Individual Applicants

- At least twenty-one years of age and is a citizen of the United States;
 - Has a high school diploma or equivalent;
 - Has not been convicted of or have pending charges for a felony or crime involving moral turpitude;
 - Is of good moral character and does not unlawfully use drugs;
 - Has not been discharged from military service with other than an honorable discharge;
- 

Criteria for Individual Applicants

- Has not been found to have committed misconduct as defined by S.C. Code Ann. § 23-23-150;
 - Has satisfied to SLED that the applicant has or will have an adequate training program with a curriculum approved by SLED, or that adequate training will be obtained from another approved source;
 - Has a valid license and is in good standing with South Carolina Department of Insurance, or other regulatory authority, if applicable; and
 - Meets any and all other qualifications SLED may establish by regulation.
- 

Corporate Entity Applicants

If the applicant is a corporation, partnership, limited liability company, or other legal entity, the application must be signed under oath by each partner, director, and officer. Each partner, director, or officer must certify that each meets the criteria.



Application Process

- ▶ Supply all required information, affirmations, and acknowledgements set forth in the Standards along with fingerprints for the background checks.
- ▶ The applicant must secure and demonstrate proof of a general liability insurance policy with at least one million dollars (\$1,000,000.00) of coverage, which must be applicable at all times the applicant is engaged in electronic monitoring in South Carolina.



Required Acknowledgments

Acknowledge that the Entity and all the Employees of the Entity will comply with the requirements of South Carolina law:

- Provide active electronic monitoring devices approved by SLED that must provide verifiable identity and location information at regular and random intervals throughout the day, and that timely record and report the person's presence near or within a prohibited area or the person's departure from a specified geographic location (as applicable pursuant to the court order);
 - Allow any law enforcement agency, including the prosecutor's office, to have access to real-time monitoring, if possible, and provide any reports requested by law enforcement or the prosecution within twenty-four hours of the request;
- 

Required Acknowledgments

- Notify the prosecutor having jurisdiction over the participant and the bondsman within forty-eight hours when the entity or employee becomes aware that the participant has violated any provision of the court's order for electronic monitoring, or the participant has been surrendered to the custody of law enforcement;
 - Immediately notify local law enforcement and the prosecutor having jurisdiction over the participant and make reasonable attempts to immediately notify the victim if the participant violates any exclusion zones related to the victim; and
 - Comply with all requirements of the court order, including electronic monitoring as a pretrial release condition and all requirements of the applicable South Carolina laws and regulations, and all standards mandated by SLED.
- 

Competency and Capability

- Each applicant must demonstrate to SLED that the applicant, and all employees, can perform all of the above requirements and that the applicant and all employees have the requisite training, background, and experience to successfully monitor electronic monitoring participants in a manner that promotes public safety and protects crime victims in South Carolina.
 - Each applicant must provide documentation that the applicant has the capability to provide enough employees on duty at all times so that the number of individuals being monitored does not pose a threat to public safety, but not less than one employee on duty and one on call and available twenty-four hours a day, seven days a week.
- 

Employee Requirements

Provide SLED a current list of all employees who are or will be employed by the applicant. Each employee must:

- ▶ Be at least eighteen years of age and be a citizen of the United States;
 - ▶ Have not been convicted of or have pending charges for a felony or crime involving moral turpitude;
 - ▶ Be of good moral character;
 - ▶ Meet any and all other qualifications SLED may establish by regulation.
- 

Additional Required Acknowledgments

For each employee, the applicant must provide an acknowledgment in writing that the applicant **will not** utilize an employee who is (a) not competent or capable of performing the requirements of [the law], or (b) who has not successfully completed SLED-approved training on the use of electronic monitoring equipment or the monitoring of a participant.

Each applicant must acknowledge and agree that the failure to maintain compliance with standards or regulations established by SLED, the order of the court, or any applicable statute shall be grounds for administrative action by SLED, by the South Carolina Department of Insurance, or any other regulatory or licensing authority. Each applicant must acknowledge that it will fully comply with any investigation in this regard.



Required Policies and Procedures

Each applicant must have and must provide a written policy and procedure governing the availability, storage, and use of electronic monitoring devices and equipment, which includes provisions for:

- ▶ secure storage, making equipment inaccessible to the participant;
 - ▶ visual and physical inspection of equipment worn by the participant to determine its condition not less than once per month;
 - ▶ maintaining an updated and current master listing and inventory of all electronic monitoring devices and equipment;
 - ▶ having available at least one complete backup unit for every 10 units in use within a reasonable amount of time;
 - ▶ responses to system malfunctions; and
 - ▶ maintenance and cleaning of equipment.
- 

List of Devices

Provide SLED with a list of monitoring devices sought to be used:

- The device must record or transmit oral or wire communications or an auditory sound, visual images, or information regarding the person's location and activities, and must timely record and report the person's location.
 - If the device is a mobile phone application, the application must verify live biometric, photographic, and videographic identification information, and must timely record and report the person's location.
- 

Obligations of Approved Agency

- Maintain a physical office location in South Carolina at an address provided to SLED.
 - Maintain a working business email and telephone number that is accessible 24 hours a day.
 - Notify SLED of any change of address or of any change in contact information within 3 business days.
- 

Record Keeping

Maintain records in South Carolina related to all participants being actively monitored by the electronic monitoring company, which must be immediately available and accessible for inspection by SLED or by any law enforcement agency, prosecutor, or by any designated court representative upon request.

At a minimum, the following records must be kept:

- ▶ all executed written contracts or agreements for service, including signatures;
 - ▶ all bonds and court orders for each participant monitored;
 - ▶ documentation regarding attempts to collect fees and receipts of all payments for electronic monitoring services;
 - ▶ management reports or documentation regarding all participants; and
 - ▶ any other documentation regarding participant compliance with electronic monitoring.
- 

Additional Record Keeping

Keep the following statistical information available (for the past 3 years):

- ▶ the number and names of participants being monitored on the first day of each month, categorized by the type of electronic monitoring, device used, and judicial circuit;
 - ▶ the number and names of participants for whom monitoring was initiated during the month, categorized by the type of electronic monitoring, device used, and judicial circuit;
 - ▶ the number and names of participants for whom monitoring was ended during the month, categorized by the type of electronic monitoring, device used and judicial circuit;
 - ▶ the number and names of participants being monitored on the last day of the month, categorized by the type of electronic monitoring, device used, and judicial circuit;
- 

Additional Record Keeping

Keep the following statistical information available (for the past 3 years):

- ▶ the number and names of participants violating the court order or program rules, and the number and names of participants removed from monitoring for a violation, categorized by the type of monitoring, device used, and judicial circuit;
 - ▶ the number and names of participants that are arrested while being monitored, categorized by the type of monitoring, device used, and judicial circuit;
- 

Additional Record Keeping

Keep the following statistical information available (for the past 3 years):

- ▶ the number of instances for which a participant was unaccounted for, absent from an approved location, or whose location was unknown within the following time frames:
 1. less than 2 hours;
 2. more than 2 hours but less than 24 hours; and
 3. 24 hours or more.
 - ▶ for each such individual identified in item (g) above, the name of the participant and the name of the law enforcement agency or other appropriate official to whom the violation was reported in accordance with these standards and South Carolina law.
- 

Annual Reporting

Each electronic monitoring agency must also send SLED an annual report containing the above information for the previous calendar year. This report must be sent by January 30 each year unless an extension is approved in writing by SLED.

REPORTING REQUIREMENTS BEGIN IN 2025



Training Requirements

Maintain training records for all current employees. Employee training must consist of a minimum of **fourteen (14) hours of instruction annually**. The training must be approved by SLED and must include training on the following topics:

- ▶ An overview of the criminal justice system (including the commercial bail bond industry);
 - ▶ The types of electronic monitoring allowed in South Carolina;
 - ▶ Instruction on reading and interpreting court orders;
 - ▶ Instruction on record-keeping requirements, privacy and other confidentiality concerns;
 - ▶ Installing and troubleshooting errors to equipment; and
 - ▶ Public safety, victim safety, and participant safety issues.
- 

Prohibited Relationships

- ▶ An electronic monitoring agency may not engage in the electronic monitoring of any participant who is in any way related by blood or marriage to any employee of the agency.
 - ▶ An electronic monitoring agency may not monitor any individual with a personal, fiduciary, business, or financial relationship with any employee of the agency.
 - ▶ The electronic monitoring agency may not enter into any agreement with an individual that would pose an actual, potential, or apparent conflict of interest because of a fiduciary, business, personal, or financial relationship with any employee of the agency.
- 

Prohibited Conduct

- ▶ An employee of an electronic monitoring agency may not associate with a participant except in a professional relationship that will support the goals of the electronic monitoring program. A monitoring agency or employee may not employ a participant or member of the participant's family for at least 1 year after the termination of the monitoring.
 - ▶ A monitoring agency licensee or employee may not engage in criminal conduct, violate any laws of this State related to bail, or violate these standards.
- 

Protecting Participant Records

An electronic monitoring agency shall have a written policy ensuring the confidentiality of records of all participants and shall only allow access to this information as is authorized in these standards or when required by law or regulation.



Intake and Orientation Policies

Agency must have approved policies governing Intake and Orientation that provide:

- Documented verification of a valid legal document noting the conditions and stipulations ordered by the court, which must be maintained;
 - Collection of personal data pertaining to the monitored individual, including all contact information needed to facilitate monitoring, which must be safeguarded;
 - Procedures to verify a participant's approved location, if the participant is restricted by court order to a single location or designated locations;
- 

Intake and Orientation Procedures

Agency must have approved policies governing Intake and Orientation that provide:

- ▶ Procedures for the installation of appropriate certified monitoring devices as ordered by the court;
 - ▶ Documentation regarding the use, servicing, repair, and care of the monitoring device;
 - ▶ Compliance expectations for any and all approved locations or exclusion zones; and
 - ▶ Rules and regulations required for monitoring or compliance with the court order.
- 

Required Documentation from Participant

Obtain Written Acknowledgement that Participant will:

- ▶ Wear an approved device at all times to verify his compliance with the conditions of his detention or pre-trial release order or if the device is not body worn, must maintain possession of his approved device on or near his person at all times for the duration of the detention and must verify his identity and location at any time required by the order of the court and must maintain the monitoring device on or near his person at all times for the duration of the detention, subject to the order of the court and reasonable orders of an agent or employee of the monitoring agency in order to effectuate the conditions of the monitoring order. ...
- 

Required Documentation from Participant

Obtain Written Acknowledgement that Participant will:

- ▶ Charge and maintain the monitoring device in working order and must report any damage, destruction, or noticeable malfunction of the active monitoring device, whether the incident was accidental or intentional, and including the device having a dead battery, to the following parties within two hours of the incident: the monitoring agency, the appropriate law enforcement agency with jurisdiction over the underlying offense, and any other party specified in the order;
- 

Required Documentation from Participant

Obtain Written Acknowledgement that Participant will:

- ▶ Abide by other terms and conditions set forth by the approved electronic monitoring agency with regard to the monitoring device and electronic monitoring program;
 - ▶ Turn himself in to custody of the appropriate detention facility upon the order or direction of the electronic monitoring agency, or the appropriate law enforcement agency with jurisdiction over the offense; and
 - ▶ Notify the electronic monitoring agency and the court of any change of the participant's address, phone number, or other contact information.
- 

Fees

An approved electronic monitoring agency must have a written policy and procedure governing the collection of fees, which must be in accordance with S.C. Code Ann. § 17-15-35(B)(3) and all other applicable statutes.

A decorative graphic element located at the bottom left of the slide. It consists of a series of overlapping triangles and trapezoids in shades of blue and black, creating a modern, abstract design.

S.C. Code Ann. § 17-15-35(B)(3)

Specifically, the law requires that a Participant must:

- ▶ Pay for the cost of the approved active electronic monitoring device and the operation of the monitoring device for the duration of the time the person is required to be electronically monitored, subject to an order of indigency by the court. The summary court or circuit court has jurisdiction upon motion of the defendant to consider exempting a person from the payment of a part or all of the cost during a part or all of the duration of the time the person is required to be electronically monitored, if it is determined that exceptional circumstances exist such that these payments cause a severe hardship to the person who is deemed indigent. If the indigency hearing is held at a time and date separate from the initial bond hearing, the defense must notify the prosecutor, the bondsman, and the monitoring agency of the date, time, and location of the hearing subject to the notice requirements of the court.
- 

S.C. Code Ann. § 17-15-35(B)(3)

The payment of the cost must be a condition of supervision of the person and a delinquency of two weeks or more in making payments may operate as a violation of a term or condition of the electronic monitoring and bond. No person shall be denied the privilege of electronic monitoring under this statute based on inability to pay upon a finding by the court that the defendant meets the qualifications for indigency. The State shall allocate funds to be housed in an indigency fund under the control of the Department of Public Safety to be distributed to the monitoring companies as appropriate to cover the cost of indigent participants.



Additional Requirements

An electronic monitoring agency shall, at all times have:

- ▶ Enough employees on duty so that the number of individuals being monitored does not pose a threat to public safety, but not less than one employee on duty and one on call and available twenty-four hours a day, seven days a week;
 - ▶ In-person contact with a participant as ordered by the court;
 - ▶ Sufficient capability to verify a participant's approved location or designated location, if the participant is restricted by court order to a single location or designated locations;
- 

Additional Requirements

An electronic monitoring agency shall, at all times have:

- ▶ Verification of the monitored individual's attendance at, and status of, employment or a court-ordered activity, or both;
 - ▶ The capability to provide immediate notification to the local law enforcement agency, and the capability to provide all required notifications to the court or to the appropriate prosecutor within the required timeframes;
 - ▶ Written policies and procedures to govern emergency situations, including the following:
 - (1) power outage(s);
 - (2) loss of telephone service;
 - (3) fire;
 - (4) flood;
 - (5) malfunction of equipment; and
 - (6) storm or weather event.
- 

Required Written Notices

Before initiating monitoring, the electronic monitoring agency must provide written notice to all participants of the following requirements:

- ▶ A Participant ordered by the court to be monitored under the provisions of this section who fails to comply with any of the provisions of this section or who fails to comply with any additional condition of the court order, including location restrictions, may have his bond revoked or may be punished for contempt at the discretion of the court.
- ▶ It is unlawful for any person, knowingly and without authority, to remove, tamper with, damage, destroy, shield the signal from, or otherwise circumvent an active electronic monitoring device, or to aid or assist a person ordered by the court to be electronically monitored under the provisions of this section to remove, tamper with, damage, destroy, shield the signal from, or otherwise circumvent a monitoring device and, upon conviction, the person must be punished under the provisions of Section 24-13-425. This subsection does not apply to a person or agent of the electronic monitoring agency or bonding company, or a member of law enforcement acting under the authority of and with compliance to the court order.

Requests for Device Certification

When requesting certification of a device, provide the following:

- ▶ All specifications, capabilities, and all functional applications of the device;
 - ▶ Written documentation concerning the electronic monitoring agency's prior uses of the device, including any disallowance of the device by any other jurisdiction;
 - ▶ The electronic monitoring agency's training materials regarding the device;
 - ▶ The device manufacturer's training materials regarding the device;
 - ▶ Sufficient proof that the device is capable of recording and transmitting information regarding the person's location and activities as required by these standards and South Carolina law;
 - ▶ Any additional information or documentation that SLED requests regarding the device.
- 

Requests for App Certification

When requesting certification of a mobile phone application, provide the following:

- ▶ All specifications, capabilities, and all functional applications of the application;
 - ▶ Written documentation concerning the electronic monitoring company's prior uses of the application;
 - ▶ The electronic monitoring company's training materials regarding the application;
 - ▶ The device manufacturer's training materials regarding the application;
 - ▶ Sufficient proof that the application is capable of recording and transmitting information regarding the person's location and activities as required by these standards and South Carolina law;
 - ▶ Sufficient proof that the application can and will verify live biometric, photographic, and videographic identification information, and timely record and report the person's location.
 - ▶ Any additional information or documentation that SLED requests regarding the device.
- 

S.C. Code Ann. § 17-15-35(B)

Did not remove judicial discretion from the process in that courts still exercise discretion and can order that individuals be placed on surveillance pending trial via “an approved electronic monitoring device” and monitored by an “approved electronic monitoring agency”.



Effective Date

2023 Act No. 83 (H.3532), §4 had an effective date of - December 20, 2023.

- ▶ What about prior orders/arrangements?
 - ▶ What about prior issues or failures monitor?
- 