

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1134

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: March 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1134 amends s. 843.23, F.S., authorizing a violation of tampering with an electronic monitoring device, which is a third degree felony, to be prosecuted in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

Tampering with an electronic monitoring device includes a range of actions that result in a person intentionally and without authorization removing or damaging an electronic monitoring device worn by himself, herself, or another person.

To the extent the bill allows prosecutions of this offense that would otherwise be barred, the bill will likely result in an indeterminate positive bed impact (i.e. an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Use of Electronic Monitoring in Florida's Criminal Justice System

There are several stages of the criminal justice system in which a court or another authorized entity may order a person to wear an electronic monitoring device. An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed. Electronic monitoring systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring.¹ Some of the instances where a person may be placed on an EM include:

- A court order allowing the release from custody to a pretrial release program while the defendant awaits trial.²
- A judge placing an offender on probation³ or community control⁴ in lieu of or in addition to incarceration.⁵
- Supervision by the Florida Commission on Offender Review.⁶

Section 843.23, F.S., makes it a third degree felony⁷ to tamper with an EM, which includes any device that is used to track the location of a person. Tampering in violation of this section includes when a person intentionally and without authority:

- Removes, destroys, alters, tampers with, damages, or circumvents the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a specified order; or
- Requests, authorizes, or solicits a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

¹ Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited March 7, 2019).

² Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 1, 2, and 8-9, November 2018, available at <http://www.oppage.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf> (last visited March 7, 2019); *See also* s. 907.041, F.S., which provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with an enumerated dangerous crime.

³ Section 948.001(8), F.S. Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose. Standard conditions of probation are enumerated in s. 948.03, F.S., and are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

⁴ Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

⁵ Sections 948.01 and 948.11, F.S. The Department of Corrections (DOC) supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control. DOC, *Introduction to Community Corrections*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 7, 2019).

⁶ Section 947.1405(7), (8), and (10), F.S.

⁷ A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

To be in violation of this section, the electronic monitoring must be ordered by a court or pursuant to an order by the Florida Commission on Offender Review.⁸

Venue

Criminal prosecutions must be tried in the county where the offense was committed. If the county is not known, the indictment or information may charge venue in two or more counties and proof that the crime was committed in that area is sufficient. If a defendant is charged in more than one county, he or she must elect the county in which he or she will be tried.⁹ Additionally, the State is required by rule to allege the venue of the crime charged.¹⁰

Chapter 910, F.S., provides various laws related to the prosecution of criminal offenses in Florida. In part, a person may be prosecuted for a violation of law for an offense that she or he commits,¹¹ while either within or outside the state, if the:

- Offense is committed wholly or partly within the state;
- Conduct outside the state constitutes an attempt to commit an offense within the state;
- Conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state; or
- Conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.¹²

An offense is considered to occur within the state for purposes of venue when:

- Either the conduct that is an element of the offense or the result that is an element occurs within the state.
- The conduct of the defendant is based on an omission to perform a duty imposed by the laws of Florida, regardless of the location of the offender at the time of the omission.¹³

A number of specified circumstances are addressed to clarify the county or counties with which a person may be prosecuted for a crime, including that a person who:

- Aids, abets, or procures the commission of an offense in another county may be tried in either the county where the aiding, etc., occurred or the county where the crime occurred.¹⁴
- Counsels, hires, or procures a felony to be committed may be tried in the same county in which the principal felon might be tried, regardless of whether the person is within or outside Florida.¹⁵

⁸ Section 843.23(2), F.S.

⁹ FLA. CONST. art. 1, s. 16(a) and s. 910.03, F.S. One exception to this is found in s. 910.035, F.S., which allows a defendant to consent to the disposition of a case, by plea, sentence, or participation in a problem-solving court, in the county where he or she is held, rather than charged. Another exception is when a court orders a change of venue to protect the defendant's due process rights pursuant to s. 910.03(2), F.S.

¹⁰ Fla. R. Crim. Pro. 3.140(d)(3), provides, in part, that each count of an indictment must contain allegations stating as definitely as possible the time and place of the commission of the offense.

¹¹ Section 910.005, F.S., provides that this conduct may also include actions done by another person for which the defendant is legally accountable.

¹² Section 910.005, F.S.

¹³ Section 910.005(3), F.S.

¹⁴ Section 910.04, F.S.

¹⁵ Section 910.12, F.S.

- Becomes an accessory after the fact¹⁶ to a felony may be tried in the county in which he or she became an accessory or in any county in which the principal in the first-degree¹⁷ might be tried.¹⁸
- Commits any acts constituting one offense in two or more counties may be tried in any county in which any of the acts occurred.¹⁹
- Is in one county and commits an offense in another county may be tried in either county.²⁰
- Commits a homicide may be tried in the county in which:
 - The physical contact that causes death occurs;
 - The death itself occurs.²¹

III. Effect of Proposed Changes:

The bill amends s. 843.23, F.S., allowing an offense of tampering with an EM to be prosecuted in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the EM was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the EM occurred.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ Section 777.03, F.S., provides that an “accessory after the fact” means any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a specified crime. Provisions of the section address specific degrees or types of offenses.

¹⁷ Section 777.011, F.S., provides that “principal in the first degree” means a person who commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed. A principal in the first degree may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

¹⁸ Section 910.13, F.S.

¹⁹ Section 910.05, F.S.

²⁰ Section 910.06, F.S.

²¹ Section 910.005(2), F.S. It is specifically provided that in homicide, the “result” is either the physical contact that causes death, or the death itself. Additionally, if the body of a homicide victim is found within the state then the death is presumed to have occurred within the state.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the offense of tampering with an EM to be prosecuted in specified locations. To the extent this provision allows prosecutions of this offense that would otherwise be barred due to lack of jurisdiction, there could be additional persons convicted and sentenced to prison under the bill. However, the bill will likely result in an insignificant positive bed impact (i.e. an increase of 10 or fewer prison beds).²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 843.23 of the Florida Statutes.

²² The Office of Economic and Demographic Research (EDR) reports that there were 34 offenders sentenced in FY 2017-18 for tampering with an electronic monitoring device, four of which were sentenced to prison. Further, EDR provides that the mean sentence length of such offenders is equal to 33.8 months. Email from EDR Staff, Re: SB 1134, March 7, 2019 (on file with the Senate Criminal Justice Committee).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 11, 2019:

The Committee Substitute changes the effective date to October 1, 2019, and makes technical changes to ensure the language is:

- Consistent throughout with the term “electronic monitoring device.”
- Clear related to the instances of when the offense of tampering with an electronic monitoring device may be prosecuted.

- B. **Amendments:**

None.