

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:CS/HB 329 Electronic Monitoring of Persons Charged with or Convicted of Offenses Involving Schools or Students

SPONSOR(S): Criminal Justice Subcommittee, Maggard

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Judiciary Committee	18 Y, 0 N	Leshko	Kramer

SUMMARY ANALYSIS

Prior to a charging document being filed in a criminal case the court having jurisdiction over the case may hear and rule on all preliminary motions regarding bail. The purpose of a bail determination in a criminal proceeding is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. If a court determines pretrial release is appropriate, it must impose certain conditions on the defendant while on release, including refraining from criminal activity of any kind and complying with all conditions of pretrial release ordered by the court.

Following a determination of guilt, a court may place an offender on probation or community control and can impose special conditions of probation or community control if the conditions are reasonably related to the circumstances of the offense committed and appropriate for the offender.

A court may impose electronic monitoring as a condition of either pretrial release or probation or community control. Electronic monitoring is the use of an electronic device to monitor a person's movement and location. Electronic monitors typically require installation and continuing supervision fees assessed directly to the person being monitored.

CS/HB 329 amends s. 907.041, F.S., and creates s. 948.301, F.S., to require a court to consider whether it is appropriate to impose electronic monitoring and a prohibition on being within 1,000 feet of a school as a condition of pretrial release or a condition of probation or community control on a defendant charged with or convicted of a specified crime involving violence or a threat of violence at or against a school or against a student at school. The bill applies to any probationer or community controllee whose crime was committed on or after October 1, 2023.

The bill defines "school" as the grounds or facility of any early learning, prekindergarten, kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.

The bill may have an indeterminate fiscal impact on local and state governments if the requirements of the bill result in an increase in the frequency with which courts order electronic monitoring. While the frequency of electronic monitoring supervision may increase, the costs of electronic monitoring services and pretrial release and probation or community control supervision are paid by offenders when not waived for an authorized reason.

The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pretrial Release

Prior to an indictment, affidavit, or information being filed in a criminal case the court having jurisdiction over the case has jurisdiction to hear and rule on all preliminary motions regarding bail.¹ The purpose of a bail determination in a criminal proceeding is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant.² When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court must consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings;
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond, particularly whether the funds can be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities;
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to or involved in the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;
- Whether the crime charged is a violation under the Criminal Gang Prevention Act or is a crime involving traveling across county lines to commit a burglary; and
- Whether the defendant is required to register as a sexual offender or sexual predator.³

If a court determines pretrial release is appropriate, it must impose certain conditions on the defendant while on release, including refraining from criminal activity of any kind and complying with all conditions of pretrial release ordered by the court.⁴

While there is a presumption in favor of release on nonmonetary conditions for any person granted pretrial release, monetary conditions may be imposed for a person charged with a dangerous crime⁵ or if it is determined that such monetary conditions are necessary to assure the presence of the person at

¹ S. 903.03(1), F.S.; "Bail" includes any and all forms of pretrial release. S. 903.011(1), F.S.

² S. 903.046(1), F.S.

³ S. 903.046(2), F.S.

⁴ S. 903.047(1), F.S.

⁵ A dangerous crime includes: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in the presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking. S. 907.041(4)(a), F.S.

trial or at other proceedings, to protect the community from risk of physical harm to persons, or to assure the integrity of the judicial process.⁶

A court has the discretion to release a person charged with a dangerous crime after his or her first appearance hearing on electronic monitoring if the findings on the record of facts and circumstances warrant such a release.⁷ Electronic monitoring is the use of an electronic device to monitor a person's movement and location.⁸ Electronic monitors typically require installation and continuing supervision fees assessed directly to the person being monitored.⁹

Probation and Community Control

A court may determine whether to place a defendant on probation or community control with or without an adjudication of guilt if the defendant has been found guilty by a jury verdict, has entered a plea of guilty or a plea of nolo contendere, or has been found guilty at a bench trial.¹⁰ A court may place a defendant on probation or into community control as an alternative to imprisonment or may impose a split sentence where the defendant is placed on probation or into community control after serving a specific period of his or her sentence.¹¹

A court shall determine the terms and conditions of probation or community control. The court may impose standard conditions and may also impose additional special conditions it considers proper.¹² Any special terms or conditions of probation or community control should be reasonably related to the circumstances of the offense committed and appropriate for the offender.¹³ The court may impose electronic monitoring as a special condition of probation or community control and the defendant must pay the Department of Corrections (DOC) for electronic monitoring services.¹⁴ However, DOC may waive payments in their entirety or in part if it finds any of the following factors:

- The offender has diligently attempted, but has been unable, to obtain or maintain employment that provides him or her sufficient income to make such payments.
- The offender is a student in a school, college, university, or course of career training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the offender's probation officer by the educational institution in which the offender is enrolled.
- The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination.
- The offender's age prevents him or her from obtaining employment.
- The offender is responsible for the support of dependents, and making the payments constitutes an undue hardship on the offender.
- The offender has been transferred outside the state under an interstate compact adopted pursuant to ch. 949, relating to parole and probation.¹⁵

Using or Threatening to Use Weapons or Firearms

Chapter 790, F.S., prohibits a person from using or threatening to use a weapon or firearm in an unlawful manner, including, but not limited to, prohibiting a person from:

⁶ S. 907.041(3)(a), F.S.

⁷ S. 907.041(4)(b), F.S.

⁸ Chloe Anderson Golub, Erin Jacobs Valentine, Daron Holman, MDRC, *Effectiveness of Pretrial Special Conditions* (Jan. 2023), <https://www.mdrc.org/publication/effectiveness-pretrial-special-conditions> (last visited Mar. 10, 2023).

⁹ Fines and Fees Justice Center, *Electronic Monitoring Fees: A 50-State Survey of the Costs Assessed to People on E-Supervision* (Sept. 2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf> (last visited Mar. 10, 2023).

¹⁰ S. 948.01, F.S.

¹¹ Ss. 948.01, 948.011, 948.012, F.S.

¹² S. 948.03, F.S.

¹³ S. 948.039, F.S.

¹⁴ S. 948.09(2), F.S.

¹⁵ S. 948.09(3), F.S.

- Possessing or discharging weapons¹⁶ or firearms at a school-sponsored event or on school property under s. 790.115, F.S.;
- Making, possessing, throwing, projecting, placing, or discharging any destructive device¹⁷ or attempting to do so under s. 790.161, F.S.;
- Throwing, projecting, placing, or discharging of a destructive device or bomb that results in injury to another person under s. 790.1615, F.S.;
- Threatening to throw, project, place, or discharge any destructive device under s. 790.162, F.S.;
- Making a false report concerning planting a bomb, an explosive, or a weapon of mass destruction,¹⁸ or concerning the use of firearms in a violent manner under s. 790.163, F.S.;
- Making false reports concerning planting a bomb, an explosive, or a weapon of mass destruction in, or committing arson against, state-owned property, or concerning the use of firearms in a violent manner under s. 790.164, F.S.;
- Planting a hoax bomb¹⁹ under s. 790.165, F.S.; or
- Manufacturing, possessing, selling, delivering, displaying, using, or attempting or threatening to use a weapon of mass destruction or hoax weapon of mass destruction²⁰ under s. 790.166, F.S.

Additionally, s. 810.095, F.S., prohibits a person who is trespassing on school property from bringing onto or possessing a firearm while on school property.²¹

Threats to Kill or Do Bodily Harm

Section 836.10, F.S., prohibits a person from sending, posting, or transmitting, or procuring the sending, posting, or transmission of, a writing or other record, including an electronic record,²² in any manner in which it may be viewed by another person, when in such writing or record the person makes a threat to kill or to do bodily harm to another person or conduct a mass shooting or an act of terrorism.²³

Effect of Proposed Changes

¹⁶ A weapon includes any: sword, sword cane, firearm, electric weapon or device, destructive device, dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, razor blade, box cutter, common pocketknife, or other deadly weapon. Ss. 790.001(13) and 790.115(1), F.S.

¹⁷ "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. S. 790.001(4), F.S.

¹⁸ "Weapon of mass destruction" means: 1) Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; 2) Any device or object involving a biological agent; 3) Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or 4) Any biological agent, toxin, vector, or delivery system. S. 790.166(1)(a), F.S.

¹⁹ A "hoax bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive as defined in this chapter, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented. S. 790.165(1), F.S.

²⁰ A "hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section. S. 790.166(1)(b), F.S.

²¹ S. 810.095, F.S.

²² "Electronic record" means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call. S. 836.10(1), F.S.

²³ S. 836.10(2), F.S.

CS/HB 329 amends s. 907.041, F.S., and creates s. 948.301, F.S., to require a court to consider whether it is appropriate to impose electronic monitoring and a prohibition on being within 1,000 feet of a school as a condition of pretrial release or a condition of probation or community control on a defendant who has been charged with or convicted of a crime, when committed at or against a school or against a student while he or she is at school, for:

- Possessing or discharging weapons or firearms at a school-sponsored event or on school property under s. 790.115, F.S.;
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempting to do so under s. 790.161, F.S.;
- Throwing, projecting, placing, or discharging of a destructive device or bomb that results in injury to another under s. 790.1615, F.S.;
- Threatening to throw, project, place, or discharge any destructive device under s. 790.162, F.S.;
- Making a false report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner under s. 790.163, F.S.;
- Making false reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property, or concerning the use of firearms in a violent manner under s. 790.164, F.S.;
- Planting a hoax bomb under s. 790.165, F.S.;
- Manufacturing, possessing, selling, delivering, displaying, using, or attempting or threatening to use a weapon of mass destruction or hoax weapon of mass destruction under s. 790.166, F.S.;
- Trespassing on school property with a firearm or other weapon under s. 810.095, F.S.; or
- Making a written or electronic threat to kill, do bodily injury, or conduct a mass shooting or an act of terrorism under s. 836.10, F.S.

The bill applies to any probationer or community controllee whose crime was committed on or after October 1, 2023.

The bill defines a “school” as the grounds or facility of any early learning, prekindergarten, kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2: Creates s. 948.301, F.S., relating to electronic monitoring as a condition of probation or community control for certain offenders.

Section 3: Amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 4: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in an increase in court-imposed electronic monitoring, which may increase the revenues of any contracted company providing such services.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on local and state governments if the requirements of the bill result in an increase in the frequency with which courts order electronic monitoring. While the frequency of supervision conditions, including a condition of electronic monitoring, may increase, the costs of electronic monitoring services and supervision fees for pretrial release and probation or community control are paid by offenders when not waived for an authorized reason.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the definition of the term "school" to include postsecondary schools and made other technical clarifying changes.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.