

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1037 Electronic Monitoring Devices  
**SPONSOR(S):** Criminal Justice Subcommittee; Torres; Plakon and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	18 Y, 0 N	Keegan	Havlicak

### SUMMARY ANALYSIS

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control, or conditional release (community supervision).

Currently, a criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case. Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.

Section 948.11(7), F.S., makes it a third degree felony for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission order, unless that person is the owner of the equipment or an agent of the owner, and is performing ordinary maintenance and repairs.

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of specified EMDs, or to solicit another person to do so.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that the bill will have an insignificant prison bed impact on the Department of Corrections. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. Since that date, the bill has been amended to expand certain criminal acts. However, it is unlikely that these changes will alter the CJIC's determination. See Fiscal Impact Section.

The bill is effective October 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,<sup>1</sup> or conditional release<sup>2</sup> (community supervision). Florida has used EMDs to keep track of released felons for years, and over 5 million offenders are monitored in some form throughout the United States.<sup>3</sup>

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.<sup>4</sup> However, judges are required to impose electronic monitoring in certain instances (e.g., judges are required to impose electronic monitoring on offenders placed on community supervision for specified sexual offenses).<sup>5</sup>

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case.<sup>6</sup> Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.<sup>7</sup>

In 2005, the Florida Legislature made it a crime to interfere with an EMD.<sup>8</sup> Section 948.11(7), F.S., makes it a third degree felony<sup>9</sup> for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission<sup>10</sup> order, unless that person is:

- The owner of the equipment or an agent of the owner; and
- Performing ordinary maintenance and repairs.<sup>11</sup>

A close read of s. 948.11(7), F.S., reveals that it is not a crime under current law to *circumvent* an EMD unless the circumvention involves altering, tampering, damaging or destroying the EMD. It is also not a crime to *solicit another person* to remove, destroy, or circumvent an EMD.

#### **Effect of the Bill**

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to knowingly and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn pursuant to a court order or an order of the Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn as described above.

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<sup>1</sup> Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. s. 948.001(1), F.S.

<sup>2</sup> Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by DOC probation officers. s. 947.1405, F.S.

<sup>3</sup> United States Department of Justice, *Electronic Monitoring Reduces Recidivism*, NATIONAL INSTITUTE OF JUSTICE (Sept. 2011) <https://www.ncjrs.gov> (last visited March 11, 2015).

<sup>4</sup> See, e.g., ss. 907.041, 947.1405, 948.101, 948.03, and 948.30, F.S.

<sup>5</sup> s. 948.30(2)(e), F.S.

<sup>6</sup> s. 907.041(4)(c)(7), F.S.

<sup>7</sup> s. 948.06, F.S.; *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Meeks*, 789 So. 2d 982 (Fla. 2001).

<sup>8</sup> Ch. 2005-28, Laws of Florida.

<sup>9</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>10</sup> The "commission" is the Florida Commission on Offender Review.

<sup>11</sup> s. 948.11(7), F.S.

The bill defines ""electronic monitoring device" to include any device that is used to track the location of a person.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 843.23, F.S., relating to tampering with an electronic monitoring device.

Section 2. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 3. Provides an effective date of October 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that the bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of less than 10 prison beds). Since that date, the bill has been amended to expand the prohibited acts in s. 843.23, F.S., to include altering, tampering with, and damaging an EMD (or asking someone else to do the same). The previous provision only included the removal, destruction or circumvention of an EMD, therefore it is unlikely that these changes will alter the CJIC's determination.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment:

- Repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S.;
- Expands the prohibited acts in s. 843.23, F.S., to include altering, tampering with, and damaging an EMD (or asking someone else to do the same) that the person is required to wear pursuant to a court order or an order by the Commission on Offender Review; and
- Amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

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