

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: SB 134

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Lifetime Electronic Monitoring of Sex Offenders

DATE: April 6, 2015

REVISED: 04/10/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 134 creates s. 943.71, F.S., an act relating to lifetime electronic monitoring of sex offenders within the Florida Department of Law Enforcement (FDLE). The bill requires the FDLE to implement an electronic monitoring system to monitor, track, and record sex offenders who are released from prison, probation, community control, or conditional release and who are sentenced to lifetime electronic monitoring. It requires the sex offender to reimburse FDLE for the electronic monitoring services.

The bill creates s. 943.711, F.S., that adds three new felonies for sex offenders who tamper with the electronic device, who fail to notify officials of damage to the device, or who fail to pay the required fees. It defines sex offender for purposes of the section as an offender convicted of a crime committed in this state on or after October 1, 2015, which requires them to register on the sex offender registry.

II. Present Situation:

Sexual Predator/Offender Registration

Florida's registry laws subject sexual predators and offenders to registration and notification requirements. All qualifying sexual predators or offenders are listed on a public registry web site maintained by the Florida Department of Law Enforcement (FDLE).¹ The web site can also provide the public with email notifications when an offender moves nearby.

The sexual predator designation in Florida is reserved for relatively few sex offenders. As of September 11, 2013, a total of 43,640 persons located in Florida were required to register as a

¹ The web site is located online at: <http://offender.fdle.state.fl.us/offender/homepage.do>. (last visited April 3, 2015).

sexual predator or sexual offender. Of that number, courts designated 21 percent as sexual predators.

Designation of a Sexual Predator or Sexual Offender

A person is designated a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Is subject to civil commitment.²

A person is designated as a sexual offender by the FDLE if the person:

- Has been convicted of a qualifying sex offense and released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Is a Florida resident and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the victim was 14 years of age or older.³

Registration Obligations of Sexual Predators/Offenders

- Registrants must report to their local sheriff's office and provide a photograph, personal identifying information, driver's license/state ID number, social security number, residence address (including transient addresses), employer information, email addresses, instant message names, and crime information.⁴
- As of October 1, 2014, all transient sexual offenders/predators are required to report in person every 30 days to the sheriff's office in their county of transient residence to provide their addressees and locations while transient.⁵
- Sexual predators and some sexual offenders must report to the local sheriff's office quarterly; other sexual offenders report bi-annually.⁶
- Sexual predators and offenders must update their driver's license or identification card within 48 hours after any change of residence or name change.⁷
- Generally, sexual predators and offenders are subject to lifetime registration. Some sexual offenders may petition for removal of registration requirements if they have been released from the latest sanction for at least 25 years, remain arrest-free, and do not have an adult conviction for a disqualifying offense. Persons convicted of a qualifying sex offense as a young adult may also petition for removal of registration requirements.⁸

² Section 775.21(4), F.S.

³ Section 943.9435(1), F.S.

⁴ Section 775.21(6) and 943.0435(14), F.S.

⁵ The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days commits a third degree felony. s. 775.21 (6)(g), F.S.

⁶ Sections 775.21(8)(a) and 943.0435(14)(a), F.S.

⁷ Sections 775.21(6)(g)1., and 943.0435(4)(a), F.S.

⁸ Sections 775.21(6)(1) and 943.0435(11), F.S.

- Sexual predators are prohibited from working or volunteering at any place where children regularly congregate.⁹

Lifetime Electronic Monitoring¹⁰

The following chart is an excerpt from information gathered by NCSL representing the states that monitor a subset of the sexual offender population for life. There are at least 39 states that have enacted GPS or electronic monitory provisions specific to sex offenders. There are at least 23 states that have enacted both GPS or electronic monitoring and 25 year minimum sentences.

State	Statute Citations	Mandatory 25 year Minimum 1st Time Offense Sentencing Provisions and Related Information	Electronic/GPS Monitoring of Sex Offenders
California	Penal Code: s. 269; 288.7; s. 3010; s. 3004	25 years to life mandatory minimum sentence for intercourse or sodomy w/ child 10 years or younger and 15 years to life for oral copulation or sexual penetration w/ child 10 years or younger. 15 years to life w/ consecutive sentencing for additional sex acts w/ a child 14 years or younger.	Requires GPS monitoring of felony sex offenders for life.
Florida	s. 800.04 s. 775.082	25 years to life mandatory minimum sentence for lewd or lascivious molestation against a victim less than 12 years of age.	Requires electronic monitoring of specified sex offenders for life.
Georgia	s. 16-5-21 s. 17-10-6.2 s. 16-6-4 s. 16-5-21 s. 42-1-14	25 year mandatory minimum sentence for crimes of sexual assault, aggravated assault with intent to rape, incest, kidnapping against a child less than 14 years old; aggravated child molestation, aggravated sodomy with child 13-15 years old; rape; aggravated sexual battery.	Requires sexually dangerous predators to wear GPS electronic monitoring device for life.
Kansas	s. 21-4642 s. 21-4643 s. 22-3717	25 years to life mandatory minimum sentence for certain child (under 14) sex offenses including rape, sexual exploitation, sodomy, prostitution, trafficking, etc, with specific exceptions. Provides 40	Requires electronic monitoring for life of certain sex offenders.

⁹ Section 775.21(3)(b)5., F.S.

¹⁰ April 7, 2015 (on file with the Senate Criminal Justice Committee).

State	Statute Citations	Mandatory 25 year Minimum 1st Time Offense Sentencing Provisions and Related Information	Electronic/GPS Monitoring of Sex Offenders
		year minimum for repeat offenders of certain sex offenses. Requires life imprisonment without the possibility of parole for repeat offenders classified as aggravated habitual sex offenders.	
Louisiana	s. 14:78.1 s. 14.81.2 s. 14.81.1 s. 14.43.1 s. 15:550 s. 15:560.4	25-99 years at hard labor mandatory minimum sentence for sex crimes against a child under 13 years old including: aggravated incest, molestation of a juvenile, sexual battery, pornography involving juveniles, etc.	Requires electronic monitoring for life of certain sex offenders.
Michigan	s. 750.520b s. 750.520n	25 years to life mandatory minimum sentence for 1st degree sexual conduct with a child under age 13.	Requires lifetime electronic monitoring when convicted of criminal sexual conduct with a child under age 13.
North Carolina	s. 14-27.2A s. 14-27.4A s. 14-208.40 s. 14-208.40A	Mandatory 25 years to life for sex related offenses against a child under 13 years of age including rape of a child, sexual offense with a child.	Requires satellite based monitoring for life of certain sex offenders.
Oregon	s. 137.700 s. 163.235	25 year mandatory minimum sentences for 1st degree sex related offenses against a child under 12 including rape, sodomy, kidnapping, sexual penetration.	Requires lifetime “active tracking” of certain sex offenders.
Rhode Island	s. 11-37-8.2.1 s. 11-37-8.2 s. 13-8-30	25 years to life mandatory minimum sentence for 1st degree child molestation sexual assault against a child 14 years and under.	Requires lifetime GPS monitoring for convicted child molesters and high risk offenders.
Wisconsin	s. 939.616 s. 301.48	25 year mandatory minimum prison sentence for sexual assault against a child under age 13 and repeated acts of sexual assault of the same child.	Requires lifetime GPS tracking for certain sex offenders.

III. Effect of Proposed Changes:

The bill creates s. 943.71, F.S., the Lifetime Electronic Monitoring Program, requiring the Florida Department of Law Enforcement (FDLE) to implement a system of monitoring sex offenders in Florida who are released from prison, probation, community control, or conditional release and who are sentenced by the court to lifetime electronic monitoring. The lifetime electronic monitoring program shall require all of the following:

- Electronic tracking of the movement and location of each sex offender sentenced to lifetime electronic monitoring from the time that he or she is released from prison, probation, community control, or conditional release for the remainder of his or her natural life; and
- Use of an electronic system that actively monitors and identifies a sex offender's location and movement, and timely reports and records his or her presence near or within a crime scene or in a prohibited area or his or her departure from specified geographic limitations. This information must be available upon request to the court or a law enforcement agency.

A sex offender who is sentenced to lifetime electronic monitoring shall wear or otherwise carry the device as determined by the department and in the manner prescribed by the program. A sex offender shall pay the department for the electronic monitoring services as provided in s. 948.09(2), F.S.¹¹

The bill creates s. 943.711, F.S., which provides a definition of "sex offender" and creates three new felonies. The bill defines "sex offender" as an offender convicted of a crime committed in Florida on or after October 1, 2015, for which he or she is required to register pursuant to s. 775.21¹², s. 943.0435¹³, or s. 944.607¹⁴, F.S. A person convicted as a sex offender shall be sentenced to lifetime electronic monitoring as provided in s. 943.71, F.S.

The bill provides that it is a third degree felony if the sex offender with lifetime electronic monitoring willfully and knowingly commits any of the following acts:

- Intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment;
- Failure to notify the Department of Corrections of any damage to an electronic monitoring device; and
- Failure to reimburse the Department of Corrections, or its agent for the cost of electronic monitoring.

Violation of this section may result in a prison term to be served consecutively to any term of prison imposed for any other violation of law committed by the offender while in violation of this section.

The bill has an effective date of October 1, 2015.

¹¹ This appears to be in an incorrect reference to the Department of Corrections statutory provision relating to payment for costs of supervision.

¹² Section 775.21, F.S., is the Florida Sexual Predators Act.

¹³ Section 943.0435, F.S., provides the criteria for which sexual offenders are required to register with FDLE.

¹⁴ Section 944.607, F.S., provides a definition of "Sexual Offender" to mean a person who is in custody or control of, or under the supervision of FDLE or in the custody of a private correctional facility.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In *Grady v. North Carolina*, 2015 WL 1400850, after completion of a convicted sex offender's sentence, he was ordered by the North Carolina Superior Court to be subjected to satellite-based monitoring as a recidivist sex offender. The sex offender appealed. The North Carolina Appeals Court affirmed and the North Carolina Supreme Court denied review. The United States Supreme Court, on a grant of certiorari, held that a State conducts a search when a device is attached to a person's body without consent for purpose of tracing that persons movements. The Court also held that North Carolina's program under which recidivist sex offenders could be subjected to satellite-based monitoring constituted a search within the meaning of the Fourth Amendment of the U.S. Constitution. The Court further stated that "the Fourth Amendment prohibits only unreasonable searches, and the reasonableness depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations." The Court stated that the North Carolina courts did not examine whether the State's monitoring program is reasonable. The Court vacated the judgment of the Supreme Court of North Carolina and remanded for further proceeding not inconsistent with its opinion.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be a cost to the individuals required to reimburse FDLE for the cost of the electronic monitoring devices.

C. Government Sector Impact:

According to FDLE the fiscal impact is indeterminate, but will likely have substantial costs. FDLE stated though not detailed in the bill language, it is likely that sheriff's

offices and police departments would need to be involved in the administration of this program. Language is needed to identify, authorize, and direct such local responsibilities.

Statutory revenues are significantly limited by the ability of the offender to pay and a great number of offenders will not meet the established criteria to pay the actual costs for the lifetime monitoring program and equipment.

It is anticipated that the costs to establish and maintain such a lifetime program, though indeterminate at this writing, will be significant and will naturally increase at a regular rate as more individuals are convicted of the many identified offenses every year and the resource costs of equipment, systems, and staffing will similarly need to increase as a result of volume and general economic changes.

Considerations include:

- 24/7 Unit Staffing and Oversight of unspecified number of offenders for life;
- Statewide staffing to identify, determine parameters, and maintain all crime scene locations, “prohibited areas,” and “specified geographic limitations”;
- Statewide staffing for local repairs to equipment, local programming relative to each offender’s area. Issues re: offender moving, leaving state, traveling, etc.;
- Equipment/Software
 - Maintenance
 - Distribution
 - Replacement
- Financial Staff
 - Fees Collections
 - Recovery Costs
 - Bookkeeping/Reporting

VI. Technical Deficiencies:

FDLE provided the following comments:

As written the bill language is unclear regarding the operating agency charged with responsibility for the proposed sex offender electronic monitoring program. The language creates new sections for the program and refers to “the department,” identified as the Florida Department of Law Enforcement (FDLE), in Chapter 943, F.S., and also references various notifications directly to the “Department of Corrections.” Lines 102-105.

A disparity in language occurs as lines 69-73 require electronic monitoring “from the time that he or she is released from prison, probation, community control, or conditional release for the remainder of his or her natural life.” As prescribed in lines 65-66, and 95-96, lifetime electronic monitoring is to be part of a conviction sentence and as such, would necessarily be included as part of some form of supervision either immediately upon sentencing or upon release from incarceration. Outside of traditional supervision forms or completion of sanctions, this provision would constitute a punitive sanction beyond a sentence served as well as implicate numerous privacy concerns and may well be ruled unconstitutional.

- “Specified geographical limitations” is undefined and would be specific to each sexual predator/offender as re: locations, type of offense, type of supervision and designation vary. (See Line 78.)
- Lines #36-44 cite a 2012 report regarding the sheriff’s offices difficulty in locating transient sexual offenders/predators.
 - Effective 10/1/2014, all transient sexual offenders/predators are required to report in person every 30 days to the sheriff’s office in their county of transient residence to provide address and location information.
 - Since the provision noted above was very recently implemented, there has not been sufficient time to determine if it is effectively assisting to reduce issues with sheriff’s offices in locating transient sexual offenders/predators.
- Lines 90-96 propose a provision for a person convicted as a sexual offender on or after October 1, 2015, to be sentenced to lifetime electronic monitoring. Lifetime electronic monitoring would be considered part of the criminal sentence. The lifetime sanction would exceed the statutory maximum punishment for many of the sexual offenses that would require sexual offender registration and may be ruled, at this time, as unlawful.
 - At this time ss. 947.1405, 948.03, 948.06, 948.063, 948.11, 948.30, 948.101, F.S., provides for the FL Department of Corrections to electronically monitor certain offenders under sanction, including sexual offenders. DOC has the same described electronic monitoring program already in place. Creating an additional section would duplicate costly programs and areas of responsibility across two agencies.
- Lines 97-109 provide punishments for violations of the proposed laws and cites punishment classification statutes s. 775.082, s. 775.083, or s. 775.084— however these sections are not revised in the bill language to reflect the proposed changes as to the level of crime and penalty. Certain sex offenses requiring registration are third degree felonies and sanctions that currently include electronic monitoring are life, first, and second degree felonies. Additionally, other statutory chapters will require amendments in order to revise associated penalties and punishments for violations and punishment in accordance with the proposed language.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 943.71 and 943.711.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
