

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 75 Electronic Monitoring Devices

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Torres and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	17 Y, 0 N, As CS	Keegan	Havlicak

### SUMMARY ANALYSIS

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

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. Pursuant to s. 948.11(7), F.S., it is 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 request, authorize, or solicit another person to do so.

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

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (an increase of ten or fewer beds).

The bill is effective October 1, 2016.

# 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). The use of EMDs is a common practice throughout the nation, with over five million offenders being monitored in some form in the United States.<sup>3</sup> Likewise, Florida has used EMDs to monitor the location of released felons for years. As of July 31, 2015, there were 4,318 offenders in Florida using EMDs while being monitored on community supervision by the Department of Corrections (Department).<sup>4</sup>

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.<sup>5</sup> Additionally, 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>6</sup> The Commission on Offender Review (Commission) is given the authority to determine the conditions of release, including ordering an offender to use an EMD, when an offender is released on conditional release, control release, parole, or conditional medical release.<sup>7</sup>

Aside from the authority given to the courts and the Commission, the Department is authorized by s. 948.11(1), F.S., to order electronic monitoring of offenders serving a community control sentence. However, the Department does not exercise such authority because courts have held that an offender's community control may not be revoked for noncompliance with electronic monitoring when such monitoring was ordered by the Department instead of a judge.<sup>8</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>9</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>10</sup>

In 2005, the Florida Legislature made it a crime to interfere with an EMD.<sup>11</sup> Section 948.11(7), F.S., makes it a third degree felony<sup>12</sup> 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
- Performing ordinary maintenance and repairs.<sup>13</sup>

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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(3), 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.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwjc9O6m-NbIAhXGSiYKHfQwDPU&url=https%3A%2F%2Fwww.ncjrs.gov%2Fpdffiles%2Ffni%2F234460.pdf&usg=AFQjCNFEOxJWIVa mlIbSaotGfkGOT4SIRA&sig2=qiNkzbUrRBTZ-wZ4CaZ9Sw&bvm=bv.105814755,d.eWE> (last visited Oct. 22, 2015).

<sup>4</sup> Department of Corrections, Agency Analysis of 2016 House Bill 75, p. 3 (Sept. 24, 2015).

<sup>5</sup> See, e.g., ss. 907.041, 947.1405, 948.101, and 948.30, F.S.

<sup>6</sup> s. 948.30(2)(e), F.S.

<sup>7</sup> s. 947.13, F.S.

<sup>8</sup> *Carson v. State*, 531 So. 2d 1069 (Fla. 4th DCA 1988); *Anthony v. State*, 854 So. 2d 744, 747 (Fla. 2d DCA 2003).

<sup>9</sup> s. 907.041(4)(c)7., F.S.

<sup>10</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>11</sup> Ch. 2005-28, Laws of Fla

<sup>12</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>13</sup> s. 948.11(7), F.S.

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, alter, tamper with, damage, 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 intentionally 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, authorize, 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.

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, 2016.

## **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 met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (an increase of ten or fewer beds). In Fiscal Year 2014-2015, 13 offenders were sentenced for this offense and eight received a prison sentence (mean sentence length was 25.5 months).

### **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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The committee substitute clarifies that *any* person who intentionally removes, destroys, alters, tampers with, damages, or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

On February 4, 2016, the Judiciary Committee adopted an amendment and reported the bill favorable as a committee substitute. The committee substitute clarifies wording in the bill and prohibits a person from requesting, *authorizing*, or soliciting another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn as provided in the bill.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.