

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 Judiciary

BILL: CS/SB 1134

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1134 authorizes a prosecution for the crime of tampering with an electronic monitoring device to occur 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.

Under s. 843.23, F.S., the crime of “tampering with an electronic monitoring device,” includes not only “tampering” with an EMD, but also the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD worn or used by that person or another person; or
- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, to violate the statute, the use of the EMD must have been ordered by a court or the Florida Commission on Offender Review.

To the extent the bill results in additional prosecutions of this offense, 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 (EMD). An EMD 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 in which a person may be placed on electronic monitoring 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., "Tampering with an electronic monitoring device," prohibits several acts in addition to "tampering," including the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD that must be worn or used by that person or another person; or

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.

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>; 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 Florida Department of Corrections (FDC) 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. FDC, *Introduction to Community Corrections*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 22, 2019).

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

- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, for these acts to constitute a violation of this section, the wearing of the EMD must have been ordered by a court or the Florida Commission on Offender Review.⁷

Committing any of these acts is a third degree felony.⁸

Venue

Criminal Defendant's Right to be Tried in County Where Crime Was Committed

As provided in the State Constitution, a criminal defendant has a right to be prosecuted in the county where the offense was committed.⁹ However, if the county is not known, the Constitution provides that indictment or information may charge venue in two or more counties if the state can prove that the crime was committed in that area.¹⁰ Under these circumstances, “the accused may elect the county in which he or she will be tried.”¹¹

As another exception to the general rule on venue for criminal prosecutions, a court may change the venue to protect a defendant's due process rights to a fair and impartial jury.^{12, 13}

Application of the general rule that a defendant be tried where the crime was committed can be complicated if the elements of a crime or resulting harm transcend the boundaries of county. Accordingly, several statutes in ch. 910, F.S., address venue for these crimes and circumstances. For example, 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.¹⁵

⁷ Section 843.23(2), F.S.

⁸ 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.

⁹ FLA. CONST. art. 1, s. 16(a); s. 910.03(1), F.S.

¹⁰ *See Id.*

¹¹ *See* s. 910.03(1), F.S.

¹² *See* s. 910.03(2) and (3), F.S.

¹³ Additionally, a defendant who is outside the county of the crime may plead guilty or nolo contendere and waive his or her right to trial. *See* s. 910.035, 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; or
 - The death itself occurs.²¹

III. Effect of Proposed Changes:

CS/SB 1134 authorizes a prosecution for the crime of tampering with an EMD to occur 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.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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 910.09, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to authorize a prosecutor to choose a venue for an EMD tampering trial which is inconsistent with the constitutional limitations on where a criminal prosecution may occur. Article I, section 16 of the Florida Constitution states that in all criminal prosecutions the accused person has the right to a trial “in the county where the crime was committed,” unless the county is not known. However, even if the county of the crime is not known to the prosecution, it must choose two or more adjacent counties and prove that the crime happened in that area.

The bill permits a prosecutor to try a person accused of tampering with an EMD in any of three places, including “the jurisdiction of the court or authority that entered the order for electronic monitoring,” or the jurisdiction where an EMD is found. However, in a given case, the tampering might not have occurred in either of these places.

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 EMD 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.

²² The Office of Economic and Demographic Research (EDR) reports that there were 34 offenders sentenced in FY 2017-18 for tampering with an EMD, 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).

VIII. Statutes Affected:

This bill substantially amends section 843.23 of the Florida Statutes.

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.