

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 496

**INTRODUCER:** Criminal Justice Committee and Senator Burgess

**SUBJECT:** Electronic Monitoring of Persons Charged with or Convicted of Offenses Involving Schools or Students

**DATE:** April 21, 2023      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Favorable</u>
3.	<u>Parker</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 496 amends s. 903.041, F.S., authorizing electronic monitoring and location restrictions as conditions of pretrial release of persons charged with certain offenses against schools or students. The court must consider whether conditions of electronic monitoring and a prohibition of being within 1,000 of any school are appropriate conditions of pretrial release, when a defendant is charged with any of the certain offenses if such offense is against a school or a student.

The bill creates s. 948.301, F.S., authorizing electronic monitoring and location restrictions for probationers or community controllees who commit certain offenses against schools or students. The bill provides the court must consider whether or not to require electronic monitoring or prohibit the probationer or community controllee from being within 1,000 feet of any school.

The bill is effective October 1, 2023.

**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. An electronic monitoring

device (EM) 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.<sup>1</sup> Some of the instances where a person may be placed on an EM include:

- A court order allowing the release from custody to a pretrial release program while the defendant awaits trial.<sup>2</sup>
- A judge placing an offender on probation<sup>3</sup> or community control<sup>4</sup> in lieu of or in addition to incarceration.<sup>5</sup>
- Supervision by the Florida Commission on Offender Review.<sup>6</sup>

Section 843.23, F.S., makes it a third-degree felony<sup>7</sup> to tamper with an EM, which includes any device that is used to track the location of a person. Tampering in violation of this section includes when a person intentionally and without authority:

- Removes, destroys, alters, tampers with, damages, or circumvents the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a specified order; or
- Requests, authorizes, or solicits a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

### ***Electronic Monitoring***

The Department of Corrections (DOC) must electronically monitor an offender sentenced to community control when the court has imposed such condition.<sup>8</sup> Any offender placed under supervision who violates the terms and conditions of supervision and is restored to supervision

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<sup>1</sup> Office of Juvenile Justice and Delinquency Prevention, Home Confinement and Electronic Monitoring, October 2014, available at [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/home\\_confinement\\_em.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/home_confinement_em.pdf) (last visited March 22, 2023).

<sup>2</sup> 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 <https://oppaga.fl.gov/Documents/Reports/18-06.pdf> (last visited March 22, 2023); 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> Sections 948.01 and 948.11, F.S. The DOC supervises more than 146,000 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. DOC, Introduction to Community Corrections, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 22, 2023).

<sup>6</sup> Section 947.1405(7), (8), and (10), F.S.

<sup>7</sup> A third-degree felony is punishable by up to 5 years of incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 948.11(1), F.S.

may be supervised by means of an electronic monitoring device or system if ordered by the court.<sup>9</sup>

Electronic monitoring is a condition of a court or commission order for probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses. A system that actively monitors and identifies the offender's locations and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations must be used.<sup>10</sup>

Any person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment pursuant to court or commission order, commits a third degree felony.<sup>11</sup>

### ***Probation***

The Office of Community Corrections currently supervises more than 146,000 offenders throughout Florida. These adult offenders are monitored and supervised by probation officers located in 130 probation offices. This includes offenders released from prison on parole, conditional release, or conditional medical release. It also includes offenders placed on court ordered supervision including regular probation, administrative probation, drug offender probation, sex offender probation, and community control.<sup>12</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 903.041, F.S., authorizing electronic monitoring and location restrictions as conditions of pretrial release of persons charged with certain offenses against schools or students. The court must consider whether conditions of electronic monitoring and a prohibition of being within 1,000 feet of any school are appropriate conditions of pretrial release, when a defendant is charged with any of the following offenses if such offense is against a school or a student:

- Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited;<sup>13</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;<sup>14</sup>
- Unlawful throwing, projecting, or discharging of destructive device or bomb that results in injury to another;<sup>15</sup>
- Threats to throw, project, place, or discharge any destructive device;<sup>16</sup>
- False reports concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner;<sup>17</sup>

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<sup>9</sup> Section 948.11(2), F.S.

<sup>10</sup> Section 948.11(6), F.S.

<sup>11</sup> Section 843.23, F.S.

<sup>12</sup> Florida Department of Corrections, *Probation*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 22, 2023).

<sup>13</sup> Section 790.115, F.S.

<sup>14</sup> Section 790.161, F.S.

<sup>15</sup> Section 790.1615, F.S.

<sup>16</sup> Section 790.162, F.S.

<sup>17</sup> Section 790.163, F.S.

- 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;<sup>18</sup>
- Planting of “hoax bomb” prohibited;<sup>19</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction;<sup>20</sup>
- Trespass on school property with firearm or other weapon;<sup>21</sup>
- Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.<sup>22</sup>

The bill creates s. 948.301, F.S., authorizing electronic monitoring and location restrictions for offenders who commit certain offenses against schools or students if his or her crime was committed on or after October 1, 2023. The court must consider, in addition to all other standard and special conditions imposed, whether conditions of electronic monitoring and a prohibition from being within 1,000 feet of any public or private school<sup>23</sup> is appropriate as a condition of probation or community control supervision for a violation of the following offenses committed against a public or private school or a student in such a school:

- Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited;<sup>24</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;<sup>25</sup>
- Unlawful throwing, projecting, or discharging of destructive device or bomb that results in injury to another;<sup>26</sup>
- Threats to throw, project, place, or discharge any destructive device;<sup>27</sup>
- False reports concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner;<sup>28</sup>
- 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;<sup>29</sup>
- Planting of “hoax bomb” prohibited;<sup>30</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction;<sup>31</sup>

<sup>18</sup> Section 790.164, F.S.

<sup>19</sup> Section 790.165, F.S.

<sup>20</sup> Section 790.166, F.S.

<sup>21</sup> Section 810.095, F.S.

<sup>22</sup> Section 836.10, F.S.

<sup>23</sup> Section 1003.01(2), F.S., defines “School” as an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

<sup>24</sup> Section 790.115, F.S.

<sup>25</sup> Section 790.161, F.S.

<sup>26</sup> Section 790.1615, F.S.

<sup>27</sup> Section 790.162, F.S.

<sup>28</sup> Section 790.163, F.S.

<sup>29</sup> Section 790.164, F.S.

<sup>30</sup> Section 790.165, F.S.

<sup>31</sup> Section 790.166, F.S.

- Trespass on school property with firearm or other weapon;<sup>32</sup>
- Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.<sup>33</sup>

The bill defines the term “school” to mean 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.

This bill is effective October 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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<sup>32</sup> Section 810.095, F.S.

<sup>33</sup> Section 836.10, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 907.041 of the Florida Statutes.

This bill creates section 948.301 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 27, 2023:**

The committee substitute:

- 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.
- Revises s. 907.041, F.S., requiring a court to consider EM and location restrictions as conditions of pretrial release for persons charged with certain offenses against schools or students.

- B. **Amendments:**

None.