

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 Fiscal Policy

BILL: SB 1054

INTRODUCER: Senators Garcia and Avila

SUBJECT: Tampering with an Electronic Monitoring Device

DATE: April 21, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	<u>Vaughan</u>	<u>Siples</u>	<u>FP</u>	Pre-meeting

I. Summary:

SB 1054 amends s. 843.23, F.S., to reclassify the penalties regarding tampering with an electronic device. If a person is charged with or serving a sentence for a:

- Misdemeanor,¹ tampering with an electronic device is a third degree felony.²
- Third degree felony, tampering with an electronic device is a second degree felony.³
- Second degree felony, tampering with an electronic device is a first degree felony.⁴
- First degree felony or a first degree felony punishable by a term of years not exceeding life, tampering with an electronic device is a first degree felony punishable by a term of years not exceeding life.
- Life or capital felony, tampering with an electronic device is a life felony.

If a person on pretrial release tampers with an electronic monitoring device, his or her pretrial release will be terminated, and will no longer be eligible for pretrial release for the offenses for which they were on release.

The bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections. See Section V., Fiscal Impact Statement.

The bill takes effect on October 1, 2025.

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1000; a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500, as provided in ss. 775.082 and 775.083, F.S.

² A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

³ A second degree felony is punishable by a term of imprisonment not exceeding fifteen years and a fine not exceeding \$5,000, as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

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 (EM) device 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.⁵ 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.⁶
- A judge placing an offender on probation⁷ or community control⁸ in lieu of or in addition to incarceration.⁹
- Supervision by the Florida Commission on Offender Review (FCOR).¹⁰

Electronic Monitoring

The Department of Corrections (DOC) must electronically monitor an offender sentenced to community control when the court has imposed such condition.¹¹ Any offender placed under supervision who violates the terms and conditions of supervision and is restored to supervision may be supervised by means of an electronic monitoring device or system if ordered by the court.¹²

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.¹³

⁵ 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 (last visited March 3, 2025).

⁶ 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 3, 2025); 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.

⁷ 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.

⁸ 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.

⁹ Sections 948.01 and 948.11, F.S.

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

¹¹ Section 948.11(1), F.S.

¹² Section 948.11(2), F.S.

¹³ Section 948.11(6), F.S.

Probation

The Office of Community Corrections currently supervises more than 145,000 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.¹⁴

Tampering with an Electronic Monitoring Device

Section 843.23, F.S., provides it is a third-degree felony¹⁵ to tamper with an EM, which includes any device that is used to track the location of a person. It is unlawful for a person to intentionally and without authority:

- Remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court or order by the FCOR; or
- Request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

Reclassification and Ranking

Reclassification occurs when the Legislature *increases the degree of a conviction*. The reclassification attaches at the time the charges are filed.¹⁶ Reclassification of a criminal conviction from one degree to a higher degree stems from an express and explicit grant of statutory authority.¹⁷ The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony.

- 60 days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- 15 years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁸

Section 775.087(1)(a-c), F.S., reclassifies the penalty in cases that a weapon or a firearm is an essential element during the commission of a felony by reclassifying the penalty to a higher degree.¹⁹

¹⁴ Florida Department of Corrections, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 3, 2025).

¹⁵ 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.

¹⁶ *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

¹⁷ *Cf. Spicer v. State*, 615 So.2d 725, 726 (Fla. 2d DCA 1993) (reversing reclassification of robbery with a mask conviction because “[p]enal statutes must be construed in terms of their literal meaning [I]f the legislature had intended section 775.0845 [Florida Statutes (1989)] to reclassify offenses, it would have so stated”).

¹⁸ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense.

Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

¹⁹ Section 775.087(1)(a-c), F.S.

III. Effect of Proposed Changes:

The bill amends s. 843.23, F.S., to reclassify the penalties regarding tampering with an electronic device. If a person is charged with or serving a sentence for a:

- Misdemeanor,²⁰ tampering with an electronic device is a third degree felony.²¹
- Third degree felony, tampering with an electronic device is a second degree felony.²²
- Second degree felony, tampering with an electronic device is a first degree felony.²³
- First degree felony or a first degree felony punishable by a term of years not exceeding life, tampering with an electronic device is a first degree felony punishable by a term of years not exceeding life.
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The bill takes effect on October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁰ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1000; a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500, as provided in ss. 775.082 and 775.083, F.S.

²¹ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

²² A second degree felony is punishable by a term of imprisonment not exceeding fifteen years and a fine not exceeding \$5,000, as provided in ss. 775.082, 775.083, or 775.084, F.S.

²³ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per the FDLE, in FY 23-24, there were 503 arrests for tampering with an electronic monitoring device, with 222 guilty/convicted and 45 adjudications withheld.
- Per the DOC, in FY 23-24, there were 12 new commitments to prison for tampering with an electronic monitoring device. It is not known what felony degree they were when tampering with the electronic monitoring device. Therefore, it cannot be determined how many of those incarcerated and those not incarcerated would be impacted by this language.
- Per the DOC, in FY 23-24, the incarceration rate for a Level 1, 3rd degree felony was 9.7 percent. The incarceration rate for a Level 4, 2nd degree felony was 29.5 percent. The incarceration rate for a Level 7, 1st degree felony was 68.4 percent, the incarceration rate for a 1st degree felony, punishable by a term of years not exceeding life was 75.4 percent, and the incarceration rate for a life felony was 87.5 percent.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 843.23 of the Florida Statutes.

²⁴ Office of Economic and Demographic Research, *SB 1054 – Tampering with Electronic Monitoring Devices*, (on file with the Senate Committee on Criminal Justice).

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.
