

STORAGE NAME: h0393.grr
DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 393
RELATING TO: Public Notice
SPONSOR(S): Rep. Morroni
STATUTE(S) AFFECTED: Chapter 775, Florida Statutes
COMPANION BILL(S): SB 210 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS
- (2) CRIME AND PUNISHMENT
- (3)
- (4)
- (5)

I. SUMMARY:

Current law requires the Department of Corrections (DC), the Parole Commission, and the Control Release Authority to provide the anticipated release date and identifying information of inmates scheduled for release to the sheriff of the county in which the inmate plans to reside. In the case of a sexual offender, the DC, Parole Commission, and the Control Release Authority must also provide the anticipated release date and identifying inmate information to the sheriff of the county and the chief of police of the municipality where the inmate plans to reside. If the sexual offender has been declared a "sexual predator" by the court, the sheriff of the county or the police chief of the municipality where the inmate plans to reside must notify the community and the public of the sexual predator's presence in the community.

HB 393 creates s. 775.212, F.S., which requires the appropriate sheriff or the chief of police to notify the public of the name, address, description including photograph, and circumstances of the crime committed by a violent offender who plans to reside in the community. The bill defines a "violent offender" to mean an offender who has been convicted of a felony or an attempt or conspiracy to commit a felony, where one or more of the felony convictions was for: arson; sexual battery; robbery; kidnaping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

The bill does not specify how a local law enforcement agency should provide public notice and therefore, the fiscal impact is indeterminate. However, the bill appears to have a fiscal impact upon local governments and may qualify as a mandate under Article VII, Section 18 of the Florida Constitution.

This act shall take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Current Notification Requirements for Release of Inmates

Presently, s. 944.605, F.S., requires the Department of Corrections (DC), the Parole Commission, or the Control Release Authority, whichever is appropriate, to notify crime victims, within 6 months before each inmate's release, of the inmate's anticipated release date. Additionally, the DC, Parole Commission, or the Control Release Authority must also notify the original sentencing judge, the appropriate state attorney, the original arresting law enforcement agency, and the sheriff in the county where an inmate plans to reside to provide an inmate's anticipated release date. According to DC staff, the department also notifies, where possible, the chief of police of the municipality in which an inmate plans to reside.

Additionally, if an inmate is to be released after having served 1 or more convictions for robbery, sexual battery, home-invasion robbery, carjacking or a similar offense, and if such prior conviction information is contained in the department's records, the appropriate releasing agency shall notify the sheriff of the county or the chief of police of the municipality in which the inmate plans to reside, the following information: name; social security number; date of birth; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; and a photograph taken not more than 90 days before the date of the inmate's release. The DC, Parole Commission or Control Release Authority shall provide this information within 6 months before the inmate is released.

Current Notification Requirements for Release of Sexual Offender Inmates

Pursuant to s. 944.606, F.S., the DC must provide the following information regarding any sexual offender scheduled to be released after serving a period of incarceration for any offense: name; social security number; race; sex; date of birth; height; weight; hair and eye color; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints; a photograph taken within 90 days of release; and the offender's intended residence address, if known. This information must be provided to the sheriff of the county in which the sexual offender was sentenced, the sheriff of the county and, if applicable, the police chief of the municipality where the sexual offender intends to reside, and any individual who requests such information. The DOC must provide this information within 6 months prior to the anticipated release of a sexual offender or as soon as possible if the offender is released earlier than anticipated. This section does not authorize the DC or law enforcement agencies to notify the community and the public of a sexual offender's presence in the community.

Current Notification Requirements for Release of Sexual Predator Inmates

Pursuant to s. 775.21, F.S., the Florida Sexual Predators Act, an offender who was found by the court to be a sexual predator for an offense committed on or after October 1, 1993 and before October 1, 1995 must register as a sexual predator with the Florida Department of Law Enforcement (FDLE), but is not subject to community and public notification.

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For an offense committed on or after October 1, 1995 and before October 1, 1996, a sexual predator must register with FDLE and is subject to the community and public notice provisions of former s. 775.225, F.S., which states that a hearing must be held to determine if the sexual predator poses a threat to the public. If the court finds that the sexual predator poses a threat, the sheriff of the county or the chief of police of the municipality in which the offender resides shall notify the public of the presence of the sexual predator as well as the sexual predator's name, description including photograph, name of county or municipality of residence, the circumstances of the crime and the age of the victim.

For an offense committed on or after October 1, 1996, a sexual predator must register with FDLE and maintain registration for the duration of his or her life, unless the sexual predator has had his or her civil rights restored, receives a full pardon, or has had a conviction set aside in a postconviction proceeding for any felony sex offense which met the criteria for the sexual predator designation. The sexual predator must also notify the department of any change in permanent or temporary residence within 48 hours after arrival at the new place of residence. The sheriff of the county or the chief of police of the municipality where the sexual predator resides shall notify the public and community of the sexual predator's presence in the community in a manner deemed appropriate by the sheriff or chief of police. The sheriff or chief of police must inform the community of the sexual predator's name, description including photograph, current address including the name of the county or municipality, the circumstances of the offense, and the age of the victim. Additionally, the sheriff or chief of police may coordinate notice efforts with FDLE and statewide notification is authorized as deemed appropriate by FDLE and local law enforcement.

Currently, the DC mails the required inmate information to the appropriate local law enforcement agencies. FLDE also maintains a toll-free number and internet site which provides information on sexual predators.

B. EFFECT OF PROPOSED CHANGES:

HB 393 creates s. 775.212, F.S., which requires the sheriff of the county or the chief of police of the municipality where a violent offender who is released from incarceration plans to reside to notify the public of the name, address, description including photograph of the violent offender, and the circumstances of the offense(s) committed by the violent offender.

The bill defines the term "violent offender" to mean an offender who has been convicted of a felony or an attempt or conspiracy to commit a felony, and one or more of felony convictions was for: arson; sexual battery; robbery; kidnaping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

The bill requires the sheriff of the county or the chief of police of the municipality in which the inmate plans to reside to determine whether the offender is a violent offender as defined in subsection (3) of the newly created s. 775.21, F.S. It is unclear whether the sheriff or chief of police is responsible for making the determination if the offender is

a violent offender, or if the definition of a violent offender must be the basis for such a determination.

Currently, the DC notifies the sheriff of the county in which the inmate plans to reside of the anticipated release date of the inmate. HB 393 requires that if an inmate plans to reside in a municipality, the chief of police of that municipality must notify the community and the public of the violent offender's presence. However, the bill does not mention who is responsible for notifying the chief of police of the inmate's plans to reside in the municipality.

Additionally, HB 393 does not mandate how a sheriff or chief of police shall notify the public nor does the bill contain clarifying language that would specify that a sheriff or chief of police may their discretion in providing public notice. Such language appears in s. 775.21, F.S., the Sexual Predators Act, stating that a sheriff or chief of police shall notify the public "in a manner deemed appropriate".

HB 393 does not contain any provision to exempt local law enforcement agencies from any potential civil liability they may incur as a result of clerical error. Currently, DC and other releasing agencies are exempt from such liability. Pursuant to s. 944.606, F.S., and S. 775.21, F.S., any elected or appointed official, public employee or agency is immune from civil liability for damages resulting from the release of information under these sections.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 393 establishes new responsibilities for local law enforcement agencies by requiring them to notify the public and community of the presence of a violent offender. The bill does not specify how such notice is to be provided.

Additionally, the bill does not contain a provision to relieve local law enforcement agencies from any potential liability resulting from clerical errors.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA

(2) what is the cost of such responsibility at the new level/agency?

NA

(3) how is the new agency accountable to the people governed?

NA

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

NA

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Community residents and the public may experience increased awareness of the presence of violent offenders residing within their community. Additionally, a violent offender released from incarceration may become the object of public attention and scrutiny.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA

- (2) Who makes the decisions?

NA

- (3) Are private alternatives permitted?

NA

- (4) Are families required to participate in a program?

NA

(5) Are families penalized for not participating in a program?

NA

b. Does the bill directly affect the legal rights and obligations between family members?

NA

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION ANALYSIS:

Please see Effect of Proposed Changes section above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local law enforcement agencies will incur all costs associated with establishing their public notification procedures.

2. Recurring Effects:

Local law enforcement agencies will incur some administrative costs in order to review the offender information to determine if the offender meets the criteria of a "violent offender".

If the sheriff of the county in which a municipality lies is responsible for providing the chief of police of that municipality with the appropriate inmate information, the sheriff may incur additional administrative costs as a result.

Furthermore, local law enforcement agencies will incur all costs required to provide notice to the community and the public of the violent offender's presence in the community. The bill does not specify the method to be utilized for public notification.

3. Long Run Effects Other Than Normal Growth:

None Known.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Sexual Predators Act requires the sheriff or chief of police of the respective county or municipality in which an offender plans to reside to provide notice to the public of the sexual predator's presence in the community. Per DC staff, many local law enforcement agencies utilize the FDLE's internet site and toll-free number which provide the required

sexual predator information to comply with the public notification provision of the Sexual Predators Act. However, this section provides that the sheriff or chief of police shall notify the public of the presence of a sexual predator in "a manner deemed appropriate by the sheriff or chief of police". Therefore, local law enforcement agencies have the discretion to select the most appropriate method of public notification.

Recently, FDLE contacted several Florida newspapers to determine the approximate cost of taking out a newspaper advertisement as a means of public notification. According to the FDLE's General Counsel, the cost of running one advertisement once a week for two consecutive weeks in a newspaper of general circulation in the affected area ranged from \$500 to \$3500. FDLE staff further commented that such an advertisement in the Miami Herald would cost approximately \$2800.

According to DC staff, 7923 violent offenders were released in fiscal year 1995-1996. Based on this figure, if local law enforcement agencies decided to notify the public via advertisements in a newspaper of local circulation, based on the estimated costs of such advertisements obtained by FDLE, the cost for such notification could range from approximately \$3.9 million (\$500 per advertisement per inmate for 7,923 inmates) to approximately \$27.7 million (\$3500 per advertisement per inmate for 7.923 inmates).

However, the bill does not require local law enforcement agencies to run newspaper ads to meet the public notice requirements. Other less expensive means of notification could be utilized, such as press conferences, toll-free number, internet site, flyers, etc.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 393 requires cities and counties to spend funds or take actions requiring the expenditure of funds in order to notify the public of the presence of a violent offender in the community. However, it is unclear as to whether or not the bill constitutes a mandate. Last year, the House of Representatives used the following standard in determining whether a bill had an "insignificant fiscal impact" and was exempt from the mandates provision: If the costs incurred by cities and counties did not exceed \$1.4 million (10 cents per person residing in Florida, based on an approximate population of 14 million residents), then the bill qualified for the "insignificant fiscal impact" exception. The Speaker has not issued an opinion or change to the above-mentioned standard.

According to DC staff, 7.923 violent offenders were released in fiscal year 1995-1996. In order to exceed the \$1.4 million threshold, local law enforcement agencies would have to spend \$177 per inmate released.

However, the bill does not specify the method local law enforcement agencies should utilize to notify the public. Therefore, the exact fiscal impact of this bill upon cities and counties is indeterminate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

If this bill is determined to be a mandate upon local governments, language should be added to the bill stating that the law fulfills an important state interest. Because this bill does not appropriate any funds to the affected local law enforcement agencies, the bill would also require a two-thirds vote of the Legislature.

Additionally, this bill does not provide any exemptions from potential civil liability that may result from a clerical error. It would appear that any costs associated with such liability would be incurred by the local law enforcement agency.

SB 514 by Senator Burt would require the DC, FDLE, and the Department of Highway Safety and Motor Vehicles to develop plans for the transmission of information, including digitized photographs to FDLE. The plan is to address long range comprehensive information transmission between agencies and law enforcement. According to DC staff, such information as permitted by law would also be available to all law enforcement agencies and the public via the internet. This bill has been referred to the Senate Criminal Justice, Governmental Reform & Oversight, and Ways & Means Committees.

The Florida Sheriffs Association supports public notification of dangerous offenders released back into the community.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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