

CHAMBER ACTION

1 The Justice Appropriations Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to sexual predators and sexual offenders;  
7 providing a popular name; amending s. 216.136, F.S.;  
8 assigning an additional responsibility to the Criminal  
9 Justice Estimating Conference; amending s. 775.082, F.S.;  
10 requiring lifetime electronic monitoring for certain  
11 offenders; creating s. 775.0821, F.S.; creating a felony  
12 offense for removing or tampering with a lifetime  
13 electronic monitoring device; providing criminal  
14 penalties; amending s. 775.21, F.S.; revising criteria for  
15 sexual predator designation; extending period for petition  
16 to remove sexual predator designation; creating s.  
17 775.235, F.S.; prohibiting the harboring of a sexual  
18 predator or sexual offender; providing criminal penalties;  
19 amending s. 921.141, F.S.; creating an aggravating  
20 circumstance pertaining to sexual predators for purposes  
21 of imposing the death penalty; amending s. 947.1405, F.S.;  
22 requiring sexual offenders and sexual predators on  
23 conditional release to be placed on electronic monitoring;

HB 1877

2005  
CS

24 requiring the Parole Commission to order sexual offenders  
 25 and sexual predators on conditional release to be returned  
 26 to prison until expiration of sentence for any material  
 27 violation of supervision; creating s. 947.1406, F.S.;  
 28 providing requirements for electronic monitoring of sexual  
 29 offenders and sexual predators on conditional release;  
 30 amending s. 948.06, F.S.; requiring electronic monitoring  
 31 for any violation of probation or community control  
 32 supervision by certain offenders and sexual predators;  
 33 amending s. 948.11, F.S.; providing requirements for  
 34 electronic monitoring of sexual offenders and sexual  
 35 predators on community control or probation; amending s.  
 36 948.30, F.S.; requiring sexual offenders and sexual  
 37 predators on community control or probation to be placed  
 38 on electronic monitoring; providing for severability;  
 39 providing an effective date.

40

41 Be It Enacted by the Legislature of the State of Florida:

42

43 Section 1. This act may be cited as the "Jessica Lunsford  
 44 Act."

45 Section 2. Paragraph (a) of subsection (5) of section  
 46 216.136, Florida Statutes, is amended to read:

47 216.136 Consensus estimating conferences; duties and  
 48 principals.--

49 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.--

50 (a) Duties.--The Criminal Justice Estimating Conference  
 51 shall:

52 | 1. Develop such official information relating to the  
 53 | criminal justice system, including forecasts of prison  
 54 | admissions and population and of supervised felony offender  
 55 | admissions and population, as the conference determines is  
 56 | needed for the state planning and budgeting system.

57 | 2. Develop such official information relating to the  
 58 | number of eligible discharges and the projected number of civil  
 59 | commitments for determining space needs pursuant to the civil  
 60 | proceedings provided under part V of chapter 394.

61 | 3. Develop official information relating to the number of  
 62 | sexual offenders and sexual predators who are required by law to  
 63 | be placed on community control, probation, or conditional  
 64 | release.

65 | Section 3. Subsection (10) of section 775.082, Florida  
 66 | Statutes, is renumbered as subsection (11), and a new subsection  
 67 | (10) is added to said section, to read:

68 | 775.082 Penalties; applicability of sentencing structures;  
 69 | mandatory minimum sentences for certain reoffenders previously  
 70 | released from prison.--

71 | (10)(a) Any defendant convicted of any of the following  
 72 | offenses shall, in addition to any other penalty provided by  
 73 | law, be subject to electronic monitoring supervised by the  
 74 | Department of Corrections for the remainder of his or her  
 75 | natural life:

76 | 1. Section 787.01(3), relating to kidnapping a child under  
 77 | age 13.

78 | 2. Section 787.02(3), relating to false imprisonment of a  
 79 | child under age 13.

HB 1877

2005  
CS

80       3. Section 787.025, relating to luring or enticing a  
81 child.

82       4. Section 794.011(2), (3), (4), or (8), relating to  
83 sexual battery.

84       5. Section 800.04(4), relating to lewd or lascivious  
85 battery.

86       (b) Any defendant convicted of the following offenses:

87       1. Section 800.04(5), relating to lewd or lascivious  
88 molestation;

89       2. Section 787.01(3), relating to kidnapping;

90       3. Section 794.011(5), relating to sexual battery; or

91       4. Section 825.1025(2), relating to lewd or lascivious  
92 battery on an elderly person,

93  
94 shall, in addition to any other penalty provided by law, be  
95 subject to electronic monitoring supervised by the Department of  
96 Corrections for the remainder of the defendant's natural life if  
97 the court determines that the defendant has been previously  
98 convicted for any violation of s. 800.04, s. 794.011, s. 787.01,  
99 s. 787.02, s. 787.025, or s. 825.1025, or any burglary of a  
100 dwelling under s. 810.02.

101       (c) The lifetime electronic monitoring required for  
102 offenders meeting the criteria of this subsection shall be in  
103 addition to any other provision of sentencing ordered by the  
104 court. The electronic monitoring shall commence upon expiration  
105 of the defendant's sentence of imprisonment, or after the  
106 period, if any, of probation, community control, or conditional  
107 release supervision, whichever occurs later. The Department of

HB 1877

2005  
CS

108 Corrections shall use a system of active electronic monitoring  
109 that identifies the location of a monitored offender and that  
110 can produce, upon request, reports or records of the offender's  
111 presence near or within a crime scene. The requirements of this  
112 subsection apply to all eligible defendants whose crimes  
113 occurred on or after July 1, 2005. For purposes of this  
114 subsection, the term "conviction" has the same meaning as  
115 provided in s. 921.0021.

116 Section 4. Section 775.0821, Florida Statutes, is created  
117 to read:

118 775.0821 Tampering with or removal of lifetime electronic  
119 monitoring device.--

120 (1) Any person subject to lifetime electronic monitoring  
121 under s. 775.082 who removes the electronic monitoring device  
122 without authorization from the Department of Corrections, or who  
123 defaces, alters, destroys, or tampers with a lifetime electronic  
124 monitoring device, commits a felony of the first degree,  
125 punishable as provided in s. 775.082 or s. 775.083.

126 (2) Any person subject to lifetime electronic monitoring  
127 under s. 775.082 must follow instructions provided by the  
128 Department of Corrections or the electronic monitoring device  
129 manufacturer to maintain the electronic monitoring device in  
130 working order. Incidental damage or defacement of the electronic  
131 monitoring device must be reported to the Department of  
132 Corrections within 2 hours. Failure to comply with the reporting  
133 requirement of this subsection is a felony of the third degree,  
134 punishable as provided in s. 775.082 or s. 775.083.

HB 1877

2005  
CS

135 Section 5. Paragraph (b) of subsection (4) and paragraph  
136 (1) of subsection (6) of section 775.21, Florida Statutes, are  
137 amended to read:

138 775.21 The Florida Sexual Predators Act.--

139 (4) SEXUAL PREDATOR CRITERIA.--

140 (b) In order to be counted as a prior felony for purposes  
141 of this subsection, the felony must have resulted in a  
142 conviction ~~sentenced separately,~~ or an adjudication of  
143 delinquency for an offense committed ~~entered separately,~~ prior  
144 to the current offense ~~and sentenced or adjudicated separately~~  
145 ~~from any other felony conviction that is to be counted as a~~  
146 ~~prior felony. If the offender's prior enumerated felony was~~  
147 ~~committed more than 10 years before the primary offense, it~~  
148 ~~shall not be considered a prior felony under this subsection if~~  
149 ~~the offender has not been convicted of any other crime for a~~  
150 ~~period of 10 consecutive years from the most recent date of~~  
151 ~~release from confinement, supervision, or sanction, whichever is~~  
152 ~~later.~~

153 (6) REGISTRATION.--

154 (1) A sexual predator must maintain registration with the  
155 department for the duration of his or her life, unless the  
156 sexual predator has received a full pardon or has had a  
157 conviction set aside in a postconviction proceeding for any  
158 offense that met the criteria for the sexual predator  
159 designation. However, a sexual predator who was designated as a  
160 sexual predator by a court before October 1, 1998, and who has  
161 been lawfully released from confinement, supervision, or  
162 sanction, whichever is later, for at least 10 years and has not

163 | been arrested for any felony or misdemeanor offense since  
 164 | release, may petition the criminal division of the circuit court  
 165 | in the circuit in which the sexual predator resides for the  
 166 | purpose of removing the sexual predator designation. A sexual  
 167 | predator who was designated a sexual predator by a court on or  
 168 | after October 1, 1998, who has been lawfully released from  
 169 | confinement, supervision, or sanction, whichever is later, for  
 170 | at least 20 years, and who has not been arrested for any felony  
 171 | or misdemeanor offense since release may petition the criminal  
 172 | division of the circuit court in the circuit in which the sexual  
 173 | predator resides for the purpose of removing the sexual predator  
 174 | designation. A sexual predator who was designated a sexual  
 175 | predator by a court on or after October 1, 2005, who has been  
 176 | lawfully released from confinement, supervision, or sanction,  
 177 | whichever is later, for at least 30 years and who has not been  
 178 | arrested for any felony or misdemeanor offense since release may  
 179 | petition the criminal division of the circuit court in the  
 180 | circuit in which the sexual predator resides for the purpose of  
 181 | removing the sexual predator designation. The court may grant or  
 182 | deny such relief if the petitioner demonstrates to the court  
 183 | that he or she has not been arrested for any crime since  
 184 | release, the requested relief complies with the provisions of  
 185 | the federal Jacob Wetterling Act, as amended, and any other  
 186 | federal standards applicable to the removal of the designation  
 187 | as a sexual predator or required to be met as a condition for  
 188 | the receipt of federal funds by the state, and the court is  
 189 | otherwise satisfied that the petitioner is not a current or  
 190 | potential threat to public safety. The state attorney in the

HB 1877

2005  
CS

191 circuit in which the petition is filed must be given notice of  
 192 the petition at least 3 weeks before the hearing on the matter.  
 193 The state attorney may present evidence in opposition to the  
 194 requested relief or may otherwise demonstrate the reasons why  
 195 the petition should be denied. If the court denies the petition,  
 196 the court may set a future date at which the sexual predator may  
 197 again petition the court for relief, subject to the standards  
 198 for relief provided in this paragraph. Unless specified in the  
 199 order, a sexual predator who is granted relief under this  
 200 paragraph must comply with the requirements for registration as  
 201 a sexual offender and other requirements provided under s.  
 202 943.0435 or s. 944.607. If a petitioner obtains an order from  
 203 the court that imposed the order designating the petitioner as a  
 204 sexual predator which removes such designation, the petitioner  
 205 shall forward a certified copy of the written findings or order  
 206 to the department in order to have the sexual predator  
 207 designation removed from the sexual predator registry.

208  
 209 The sheriff shall promptly provide to the department the  
 210 information received from the sexual predator.

211 Section 6. Section 775.235, Florida Statutes, is created  
 212 to read:

213 775.235 Harboring sexual predator or sexual offender.--Any  
 214 person who permits a sexual predator or sexual offender to  
 215 reside with that person knowing that the sexual predator or  
 216 sexual offender has failed to comply with requirements of s.  
 217 775.21, s. 943.0435, or s. 944.607 commits a felony of the third  
 218 degree, punishable as provided in s. 775.082 or s. 775.083.



HB 1877

2005  
CS

219 Section 7. Paragraph (o) is added to subsection (5) of  
220 section 921.141, Florida Statutes, to read:

221 921.141 Sentence of death or life imprisonment for capital  
222 felonies; further proceedings to determine sentence.--

223 (5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances  
224 shall be limited to the following:

225 (o) The capital felony was committed by a person  
226 designated a sexual predator pursuant to s. 775.21 or a person  
227 previously designated a sexual predator whose sexual predator  
228 designation had been removed.

229 Section 8. Paragraph (b) of subsection (7) of section  
230 947.1405, Florida Statutes, is amended, paragraph (c) is added  
231 to said subsection, subsection (9) is renumbered as subsection  
232 (10), and a new subsection (9) is added to said section, to  
233 read:

234 947.1405 Conditional release program.--

235 (7)

236 (b) For a releasee whose crime was committed on or after  
237 October 1, 1997, in violation of chapter 794, s. 800.04, s.  
238 827.071, or s. 847.0145, and who is subject to conditional  
239 release supervision, in addition to any other provision of this  
240 section ~~subsection~~, the commission shall impose the following  
241 additional conditions of conditional release supervision:

242 1. As part of a treatment program, participation in a  
243 minimum of one annual polygraph examination to obtain  
244 information necessary for risk management and treatment and to  
245 reduce the sex offender's denial mechanisms. The polygraph  
246 examination must be conducted by a polygrapher trained

HB 1877

2005  
CS

247 specifically in the use of the polygraph for the monitoring of  
 248 sex offenders, where available, and at the expense of the sex  
 249 offender. The results of the polygraph examination shall not be  
 250 used as evidence in a hearing to prove that a violation of  
 251 supervision has occurred.

252 2. Maintenance of a driving log and a prohibition against  
 253 driving a motor vehicle alone without the prior approval of the  
 254 supervising officer.

255 3. A prohibition against obtaining or using a post office  
 256 box without the prior approval of the supervising officer.

257 4. If there was sexual contact, a submission to, at the  
 258 probationer's or community controllee's expense, an HIV test  
 259 with the results to be released to the victim or the victim's  
 260 parent or guardian.

261 5. Electronic monitoring of any form when ordered by the  
 262 commission.

263 (c) Effective for a releasee whose crime was committed on  
 264 or after July 1, 2005, in violation of chapter 794, s. 800.04,  
 265 s. 827.071, or s. 847.0145, or who is designated a sexual  
 266 predator pursuant to s. 775.21, in addition to any other  
 267 provision of this section, the commission shall require  
 268 electronic monitoring as provided in s. 947.1406.

269 (9) For a releasee placed on electronic monitoring  
 270 pursuant to paragraph (7)(c) who the commission determines is in  
 271 violation of any material condition of supervision, the  
 272 commission shall order the releasee returned to prison until the  
 273 expiration of the sentence of imprisonment.

HB 1877

2005  
CS

274 Section 9. Section 947.1406, Florida Statutes, is created  
275 to read:

276 947.1406 Electronic monitoring for certain sex offenders  
277 and sexual predators.--For any conditional releasee placed on  
278 electronic monitoring pursuant to s. 947.1405(9), the department  
279 shall use a system of active electronic monitoring that  
280 identifies the location of a monitored offender and that can  
281 produce upon request reports or records of the offender's  
282 location at any time.

283 Section 10. Subsection (8) is added to section 948.06,  
284 Florida Statutes, to read:

285 948.06 Violation of probation or community control;  
286 revocation; modification; continuance; failure to pay  
287 restitution or cost of supervision.--

288 (8) This subsection shall apply to any probationer or  
289 community controllee under supervision for a violation of s.  
290 787.01, s. 787.02, s. 787.025, s. 794.011, s. 800.04, s.  
291 827.071, or s. 847.0145, or who is designated a sexual predator  
292 pursuant to s. 775.21, regardless of when his or her crime was  
293 committed. In any case, when a violation of supervision is  
294 admitted or determined by the court to be proven, and the court  
295 returns the violator to probation or community control  
296 supervision, the court must, in addition to any other condition  
297 of supervision, order electronic monitoring as described in s.  
298 948.11(6).

299 Section 11. Subsection (6) is added to section 948.11,  
300 Florida Statutes, to read:

301 948.11 Electronic monitoring devices.--

HB 1877

2005  
CS

302       (6) For any probationer or community controllee placed on  
 303 electronic monitoring pursuant to s. 948.30(3), the Department  
 304 of Corrections shall use a system of active electronic  
 305 monitoring that identifies the location of a monitored offender  
 306 and that can produce, upon request, reports or records of the  
 307 offender's location at any time.

308           Section 12. Subsection (2) of section 948.30, Florida  
 309 Statutes, is amended, and subsection (3) is added to said  
 310 section, to read:

311           948.30 Additional terms and conditions of probation or  
 312 community control for certain sex offenses.--Conditions imposed  
 313 pursuant to this section do not require oral pronouncement at  
 314 the time of sentencing and shall be considered standard  
 315 conditions of probation or community control for offenders  
 316 specified in this section.

317           (2) Effective for a probationer or community controllee  
 318 whose crime was committed on or after October 1, 1997, and who  
 319 is on supervision ~~placed on sex offender probation~~ for a  
 320 violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145,  
 321 in addition to any other provision of this section ~~subsection~~,  
 322 the court must impose the following conditions of probation or  
 323 community control:

324           (a) As part of a treatment program, participation at least  
 325 annually in polygraph examinations to obtain information  
 326 necessary for risk management and treatment and to reduce the  
 327 sex offender's denial mechanisms. A polygraph examination must  
 328 be conducted by a polygrapher trained specifically in the use of  
 329 the polygraph for the monitoring of sex offenders, where

HB 1877

2005  
CS

330 available, and shall be paid for by the sex offender. The  
331 results of the polygraph examination shall not be used as  
332 evidence in court to prove that a violation of community  
333 supervision has occurred.

334 (b) Maintenance of a driving log and a prohibition against  
335 driving a motor vehicle alone without the prior approval of the  
336 supervising officer.

337 (c) A prohibition against obtaining or using a post office  
338 box without the prior approval of the supervising officer.

339 (d) If there was sexual contact, a submission to, at the  
340 probationer's or community controllee's expense, an HIV test  
341 with the results to be released to the victim or the victim's  
342 parent or guardian.

343 (e) Electronic monitoring when deemed necessary by the  
344 community control or probation officer and his or her  
345 supervisor, and ordered by the court at the recommendation of  
346 the Department of Corrections.

347 (3) Effective for a probationer or community controllee  
348 whose crime was committed on or after July 1, 2005, and who is  
349 on supervision for a violation of chapter 794, s. 800.04, s.  
350 827.071, or s. 847.0145, or who is designated a sexual predator  
351 pursuant to s. 775.21, in addition to any other provision of  
352 this section, the court shall order electronic monitoring as  
353 provided in s. 948.11(6).

354 Section 13. If any provision of this act or its  
355 application to any person or circumstance is held invalid, the  
356 invalidity does not affect other provisions or applications of  
357 the act that can be given effect without the invalid provision

HB 1877

2005  
CS

358 | or application, and to this end the provisions of this act are  
359 | declared severable.

360 |       Section 14. This act shall take effect July 1, 2005.