

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2056

SPONSOR: Criminal Justice Committee and Senators Baker and Crist

SUBJECT: Offender & Murder Registration

DATE: April 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This proposed legislation adds convicted murderers to the Florida Career Offender Registration Act and mandates that they comply with the registration requirements of that statute. Anyone who fails to comply with the registration provisions commits either a second or a third degree felony depending on the violation. Other portions of the statutes addressing registration of career offenders are similarly amended to apply to convicted murderers.

This committee substitute takes effect July 1, 2005, and applies only to convicted murderers who are released on or after January 1, 2006.

This committee substitute substantially amends sections of the Florida Statutes: 775.13, 775.26, 775.261, 944.608, and 944.609.

II. Present Situation:

In 2002, the Legislature passed the Career Offender Registration Act requiring a career offender released on or after January 1, 2003, to register with the Florida Department of Law Enforcement or the sheriff's office where the offender resides. The Career Offender Registration Act closely mirrored the registration and public notification requirements of the Sexual Predator Act, s. 775.21, F.S., which was passed in 1993. The legislative intent in enacting these two statutes was to implement a strategy that aided law enforcement in tracking these offenders while notifying the public of their location in the community so that the public could better protect themselves. Florida Department of Law Enforcement serves as the central repository for the registration information.

When the Registration is to Occur

Section 775.261, F.S., establishes that a released career offender must register with FDLE by providing information to FDLE or the sheriff's office in the county where he or she establishes a permanent or temporary residence. This registration must occur within two working days after the offender establishes residence in Florida or within two working days after being released from the Department of Corrections or a private correctional facility.

Information that Must be Supplied

The offender must provide his or her name, social security number, age, race, gender, date of birth, height, weight, hair and eye color, photograph, address, date and place of employment, date and place of each conviction, fingerprints, and a description of the crime(s) committed. If the offender lives in a motor vehicle or similar dwelling, or a vessel or similar abode, specific information must be provided so that the residence might be easily identified and located. If FDLE determines that other information such as criminal records or genetic markers are necessary, it must be provided.

If the offender registers with the sheriff's office, the sheriff must take a photo and set of fingerprints and forward them to FDLE with the information that the offender is required to provide by statute.

Within two days of registration as a career offender, the offender is also required to register in person at a driver's license office and present proof of that registration. If qualified, the offender must obtain or renew a Florida driver's license or an identification card. The offender must identify himself or herself as a career offender and provide detailed information noting his or her address and have his or her photo taken and pay the necessary fees. Whenever the driver's license or identification card needs to be renewed or there is a change of residence or name, the offender must appear in person for the necessary changes. The photo taken at that time and all pertinent information given by the offender must be forwarded to FDLE and the Department of Corrections by the Department of Highway Safety and Motor Vehicles.

If the offender registers with FDLE, the department must notify the sheriff and, if applicable, the police chief where the offender resides within 48 hours of registration with FDLE.

Should the career offender intend to move to another state or jurisdiction, he or she must report personally to the sheriff where he or she resides at least two days before the intended move. The offender must then provide the sheriff or FDLE the address of the intended new residence. The sheriff is required to provide that information to FDLE. Failure to provide this information is a third degree felony. If the offender decides not to move as originally intended, he or she has two days from the day the intention to move was given to report to the sheriff or FDLE that he or she will remain in the state. This information must be promptly reported to FDLE. Failure to report that the offender will actually be remaining in Florida after expressing the intent to move is a second degree felony.

FDLE'S Reporting and Publishing Responsibilities

FLDE is required under the statute to maintain on-line access to the current information for each offender. This is necessary so that state, local, and federal law enforcement agencies may have instantaneous access on each offender to better monitor them. This public information may be disseminated by any means that the department deems necessary.

Duration of Reporting Requirements

Unless an offender receives a full pardon or has had the underlying conviction set aside, he or she must maintain the registration requirements of this statute for the duration of his or her life. However, an offender may petition the circuit court where he or she resides for removal of the registration requirements of a career offender if, after release, there has been no felony or misdemeanor arrest for 20 years since release from confinement, supervision, or sanction. The state attorney must be given at least three weeks' notice before the matter is heard. If the petition is denied, the offender may petition the court again at a later date. If the offender prevails with his or her petition and provides FDLE with a certified copy of the court's findings and order, FDLE shall remove the person from the career offender classification and its reporting requirements.

Public Notification

Law enforcement agencies may inform the public of the presence of a career offender in their community. The sheriff or chief of police may notify the community in any manner deemed appropriate, and statewide notification is authorized.

Verification and Immunity

FDLE and the Department of Corrections are required to implement a system for verifying career offenders' addresses. The county sheriff must annually verify the addresses and provide that information to FDLE electronically.

A broad grant of civil immunity from damages is given to elected or appointed officials, other public employees, and law enforcement agencies who act in good faith in complying with the reporting and information requirements of the Career Offender Act.

Penalties

Failure by a career offender to register or provide information that is required under this statute is punishable as a third degree felony. If someone misuses these public records to gain payment from a career offender, or knowingly distributes or publishes false information which is presented as being public records information, or materially alters this information with an intention to misrepresent the information, he or she commits a first degree misdemeanor.

Prosecution for Violation of this Act

If a career offender violates this act, he or she may be prosecuted in the county where the act or omission occurred, at their last registered address, the county where the underlying offense which designated them as a career offender was committed, or where he or she was designated as a career offender.

III. Effect of Proposed Changes:

This legislation adds convicted murderers to the Career Offender Act and requires that they submit to all of the registration requirements imposed on career offenders.

For purposes of this committee substitute, a “murderer” is defined to include anyone convicted of murder as set forth in s. 782.04, F.S., or who is convicted of murder under any comparable law of any other jurisdiction. Accordingly, anyone who is convicted of murder outside of the state of Florida and moves to this state will be required to submit to the provisions of this act.

Section 775.13, F.S., is amended to provide that murderers are exempt from registration as convicted felons if they are required to register under the career offender statute.

In s. 775.26, F.S., the Legislature has expressed its finding that career offenders are a threat to the public and that requiring them to register for purposes of tracking them and notifying the public of their location serves a common good. Murderers are added to this section of legislative findings.

The committee substitute creates additional language for s. 775.261, F.S., specifying when a murderer is not required to register as a convicted murderer. He or she is not required to register if the murderer: has been pardoned; has had his or her conviction set aside; or currently is required to register as a sexual predator or sexual offender. However, if a person is no longer required to register as a murderer, he or she might still be required to register as a career offender or convicted felon under special circumstances.

If a murderer is not sentenced to a term of imprisonment, the clerk of the court must have the murderer’s fingerprints taken and forwarded to FDLE within 48 hours of the conviction.

Section 944.608, F.S., which establishes the registration responsibilities of a career offender, is amended to clarify that those registration responsibilities also govern convicted murderers. Similarly, convicted murderers are added to s. 944.609, F.S., to establish the Department of Corrections’ responsibilities to notify other branches of law enforcement and individuals when murderers are released from incarceration.

Murderers who fail to comply with these conditions are subject to the same penalties as those currently provided for non-compliant career offenders.

This committee substitute takes effect July 1, 2005, and applies only to convicted murderers who are released on or after January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although litigants have challenged the constitutionality of statutes which require their registration as sexual predators, courts have consistently upheld their constitutionality. (*Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S. Ct. 1160, 155 L.Ed.2d 98 (2003); *Milks v. State*, 894 So.2d 924 (Fla. 2005). Both the U.S. Supreme Court and the Florida Supreme Court, in the above-referenced cases, have determined that the registration requirements do not violate procedural due process or separation of powers doctrines and are constitutional. The court in *Milks* cited the holding of *Kelly v. State*, in which the court found that even though the Sexual Predator Act clearly imposed mandatory requirements on the court, the act still did not constitute a separation of powers violation. 795 So.2d 135, 136 (Fla. 5th DCA 2001).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement, Department of Highway Safety and Motor Vehicles, Department of Corrections, clerks of Court and local sheriffs' offices are already required to perform certain duties relating to registration and public notification of career offenders. To the extent that a new class of offenders is added, this language may create a fiscal impact for these entities. Additionally, murderers who fail to register, or otherwise do not comply with these provisions, face felony sanctions. Prison bed impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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