

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 2278

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Argenziano

SUBJECT: Sexual Predators and Sexual Offenders/Electronic Monitoring

DATE: March 30, 2006

REVISED: \_\_\_\_\_

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

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## I. Summary:

The bill mainly corrects omissions in and clarifies provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005. Some of the amendments to the JLA are the result of findings and recommendations of the Jessica Lunsford Task Force, which was created by the JLA. The bill:

- Ranks in the offense severity ranking chart of the Criminal Punishment Code several offenses involving non-compliance with sexual offender and sexual predator reporting requirements, which were inadvertently not ranked in the JLA.
- Incorporates recommendations of the Office of Program Policy Analysis and Government Accountability (OPPAGA) to improve the effectiveness of Florida's sexual predator and sexual offender registry and community and public notification.
- Requires that the names or identifying information of certain applicants for governmental appointment or employment who work or volunteer in places where children regularly congregate be checked against the new National Sex Offender Public Registry.
- Clarifies that the Legislature intended a provision of the JLA requiring electronic monitoring of designated sexual predators and sexual offenders who are on probation or community control following the revocation of probation or community control to only apply if the probation or community control for any *felony* offense is revoked.
- Clarifies that the Legislature intended a provision requiring electronic monitoring of certain sex offenders on probation and community control to only apply to those sex offenders on probation or community control whose *felony* offense was committed on or after September 1, 2005.
- Corrects a provision of the JLA that requires electronic monitoring of certain sex offenders on conditional release by including sexual performance by a child and selling

or buying of minors (two offenses specified in the electronic monitoring provision) in the criteria for eligibility for conditional release supervision, and adds several additional serious offenses to the eligibility criteria (mirroring proposed language from the Jessica Lunsford Task Force).

This bill substantially amends the following sections of the Florida Statutes: 921.0022, 943.043, 943.0435, 943.04351, 947.1405, 948.063, and 948.30.

## II. Present Situation:

In 2005, the Legislature passed the Jessica Lunsford Act (JLA). See ch. 2005-28, L.O.F. This analysis summarizes statutory provisions and provisions of the JLA relevant to the analysis of CS/SB 2278.

Section 6 of the JLA ranked various offenses involving a sexual predator's and sexual offender's non-compliance with registration requirements. Several offenses were inadvertently not ranked in the offense severity ranking chart of the Criminal Punishment Code, s. 921.0022, F.S.:

- Section 775.21(6)(g)3., F.S., Sexual predator remaining at residence after reporting he or she would or did vacate; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S., Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S., Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S., Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

Because these offenses were not given a specific ranking in the offense severity ranking chart, they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. Pursuant to s. 921.0023, F.S., the third degree felony offenses previously described defaulted to a Level 1 ranking and the second degree felony offenses previously described defaulted to a Level 4 ranking. The effect of these defaults is that, unlike the offenses ranked in the JLA, which score a lowest permissible sentence of imprisonment by virtue of their ranking, the defaulted offenses, which are comparable in seriousness to the offenses ranked by the JLA, will generally not score a lowest permissible sentence of imprisonment.

Section 943.04351, F.S., which was not amended by the JLA, provides that, prior to making a decision whether to appoint or employ a person, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, a state agency or governmental subdivision must search the person's name or other identifying information of the person against the registration information regarding sexual predators and sexual offenders maintained by the Florida Department of Law Enforcement (FDLE) under s. 943.043, F.S. The search may be conducted using the Internet site of sexual predators and sexual offenders maintained by FDLE. This section does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

The federal government has recently created a national sex offender registry, which includes information from numerous states (including Florida) regarding registered sex offenders in those states. Section 943.04351, F.S., does not require a search of this registry. The search is limited to registry information maintained by FDLE, such as information in Florida's registry. If a registered sex offender from another state whose name appears in the national registry moves to Florida and does not apprise law enforcement officers in that state or in Florida that he or she is moving to Florida, law enforcement will not know that the sex offender is in Florida, unless they acquire this information from another source. If they do not know the sex offender is in Florida, the offender's name will not appear in Florida's registry.

Section 12 of the JLA created s. 947.1405(10), F.S., to provide that, effective for a conditional releasee whose crime was committed on or after September 1, 2005, in violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a conditional releasee who is designated as a sexual predator pursuant to s. 775.21, F.S., in addition to any other provision of this section, the Florida Parole Commission must order electronic monitoring for the duration of the conditional releasee's supervision.<sup>1</sup>

The Jessica Lunsford Task Force,<sup>2</sup> which was created by the JLA, and which was required by the JLA to examine the collection and dissemination of offender information within the criminal justice system and community, released its findings and recommendations on February 6, 2006.<sup>3</sup> Relevant to Section 12 are the task force's "Finding #5" and "Recommendation #5." In Finding #5, the task force found that while Section 12 included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law.

Consistent with its Recommendation #5, which was to "[c]larify existing legislation to ensure consistent implementation of the Jessica Lunsford Act in the state," the task force included proposed language to amend s. 947.1405(2), F.S., to list sexual performance, selling or buying of minors, and some other serious offenses in the eligibility criteria for conditional release.

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<sup>1</sup> Section 947.1405(2), F.S., provides that any inmate who is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution; is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S., shall upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions.

<sup>2</sup> The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

<sup>3</sup> All discussion in this analysis of the task force and its findings and recommendations is from the *Jessica Lunsford Task Force: Findings & Recommendations*. Fla. Dep't of Law Enforcement, Criminal & Juvenile Justice Info. Sys. Council, *Jessica Lunsford Task Force: Findings & Recommendations* (amended version) (Feb. 6, 2006), <https://www.fdle.state.fl.us/CJJISCouncil/documents/JLA%20Task%20Force%20-%20Final%20Report%20REVISED%20for%202%201.pdf> (last visited Mar. 25, 2006).

The proposed language provides that any inmate who, on or after July 1, 2006, commits aggravated stalking, kidnapping, false imprisonment, luring or enticing a child, human trafficking, procuring a person under age 18 for prostitution, sexual performance by a child, computer pornography, electronic transmission of pornography, electronic transmission of material harmful to a minors to minors, or selling or buying a minor, is convicted of such offense, and has served at least one prior felony commitment at a state or federal correctional institution, shall, upon receiving a tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under conditional release supervision subject to specified terms and conditions.

Section 17 of the JLA created s. 948.063, F.S., which provides that if an offender's probation or community control is revoked by the court pursuant to s. 948.06(2)(e), F.S., and the offender is designated as a sexual offender or sexual predator pursuant to s. 775.21, F.S., for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

Questions have been raised and clarification is needed as to whether the Legislature really intended to apply s. 948.063, F.S., to misdemeanors. In its Finding #5, the Jessica Lunsford Task Force found that “[c]onfusion exists as whether this [Section 17 of the JLA] includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level.”

Additionally, references to the statutes applicable to sexual offender registration were omitted from this provision of the JLA.

Section 20 of the JLA created s. 948.30(3), F.S., to provide that, effective for a probationer or community controllee whose *crime* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;
- Is designated a sexual predator pursuant to s. 775.21, F.S.; or
- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

Similar to Section 17 of the JLA, questions have been raised as to whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors.

Section 23 of the JLA provided that, every three years, the OPPAGA shall study the effectiveness of Florida's sexual predator and sexual offender registration process and community and public notification. The JLA required the OPPAGA to submit its first report to

the Legislature by January 1, 2006. The OPPAGA submitted the report, which includes the following three recommendations:<sup>4</sup>

- Require FDLE, using data provided by several agencies, to report annually to the Legislature on violations of supervision and arrest related to the re-registration requirements imposed on sexual predators and offenders as a result of the Lunsford Act.
- Require FDLE to provide, when data is available, information in Florida's Internet registry about the county where the sex-related offense occurred, a link to the statutory offense for which the sexual predator or offender was convicted, and the case number.
- Require that information that FDLE shares with local law enforcement agencies about sexual predators and offenders include notice to these agencies about those offenders who, upon their release from state incarceration, have no registration activity on record with FDLE in accordance with state law requirements for registering and reporting.

### III. Effect of Proposed Changes:

The bill mainly corrects omissions in and clarifies provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005.

**Section 1** ranks in Level 7 of the offense severity ranking chart several offenses that were inadvertently not ranked in the JLA. This ranking increases the primary offense points assessed on the Criminal Punishment Code scoresheet. A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence (a scored minimum sentence) of 21 months in state prison. The sentencing range is the lowest permissible sentence up to the statutory maximum penalty for the felony degree of the offense, as provided in s. 775.082, F.S. This means the judge can legally impose a prison sentence to a term of years that is within this range.

The offenses ranked are:

- Section 775.21(6)(g)3., F.S., Sexual predator remaining at permanent residence after reporting he or she would or did vacate; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S., Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S., Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S., Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

**Section 2** amends s. 943.043, F.S., to add the following additional recommendations of the Office of Program Policy Analysis & Government Accountability (OPPAGA) report on the

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<sup>4</sup> Office of Program Policy Analysis & Government Accountability, Fla. Legislature, *Florida's State, County, Local Authorities Are Implementing Jessica Lunsford Act*, Report No. 06-03, at 8 (Jan. 2006) <http://www.oppaga.state.fl.us/reports/pdf/0603rpt.pdf> (last visited Mar. 25, 2006).

effectiveness of Florida's sexual predator and sexual offender registration process and community and public notification:

- Require the Florida Department of Law Enforcement (FDLE) to provide, when data is available, information in Florida's Internet registry about the county where the sex-related offense occurred, a link to the statutory offense for which the sexual predator or offender was convicted, and the case number.
- Require that information that the FDLE shares with local law enforcement agencies about sexual predators and offenders include notice to these agencies about those offenders who, upon their release from state incarceration, have no registration activity on record with the FDLE in accordance with state law requirements for registering and reporting.

**Section 3** amends s. 943.0435, F.S., to incorporate a recommendation of the OPPAGA to require the FDLE, using data provided by several agencies, to report annually to the Legislature on violations of supervision and arrest related to the re-registration requirements imposed on sexual predators and offenders as a result of the JLA.

As previously noted, Section 23 of the JLA required the OPPAGA to study the effectiveness of Florida's sexual predator and sexual offender registry and community and public notification. This recommendation is from the OPPAGA January 2006 report.<sup>5</sup>

**Section 4** amends s. 943.04351, F.S., to require that state agencies or governmental subdivisions conduct a search of the National Sex Offender Public Registry regarding the names or other identifying information of persons they are considering for appointment or employment, if these persons will be working for compensation or volunteering at any park, playground, day care center, or other place where children regularly congregate. The search is conducted prior to any decision to appoint or employ such persons. This requirement is in addition to the current requirement to search these persons against registration information regarding sexual predators and sexual offenders maintained by FDLE under s. 943.043, F.S., which may include a search of Florida's registry.

As previously stated, the federal government has recently created a national sex offender registry, which includes information from numerous states (including Florida) regarding registered sex offenders in those states. Section 943.04351, F.S., does not require a search of this registry. The search is limited to registry information maintained by FDLE, such as information in Florida's registry. If a registered sex offender from another state whose name appears in the national registry moves to Florida and does not apprise law enforcement officers in that state or in Florida that he or she is moving to Florida, law enforcement will not know that the sex offender is in Florida, unless they acquire this information from another source. If they do not know the sex offender is in Florida, the offender's name will not appear in Florida's registry.

**Section 5** amends s. 948.063, F.S., to clarify that this section applies specifically to revocations of probation or community control for any *felony* offense. It also clarifies what is meant by a "designated sexual offender" by adding the language "pursuant to s. 943.0435 or s. 944.607,"

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<sup>5</sup> *Id.*

which are the sections of the Florida Statutes relevant to registration requirements for sexual offenders.

In effect, the changes provide that if an offender's probation or community control for any *felony* offense is revoked by the court under s. 948.06(2)(e), F.S., and the offender is designated as a sexual offender under s. 943.0435, F.S., or s. 944.607, F.S., or as a sexual predator under s. 775.21, F.S., for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

As previously noted, questions have been raised as to whether the Legislature intended in Section 17 of the JLA, which amended s. 948.063, F.S., to create an electronic monitoring requirement, to apply this electronic monitoring requirement to misdemeanors. The bill clarifies that this was not the Legislature's intent.

**Section 6** revises s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses. Specifically, effective for a probationer or community controllee whose *felony offense* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;
- Is designated a sexual predator pursuant to s. 775.21, F.S.; or
- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

As previously noted, questions have been raised as to whether the Legislature intended in Section 20 of the JLA, which amended s. 948.30, F.S., to create an electronic monitoring requirement, to apply this electronic monitoring requirement to misdemeanors. The bill clarifies that this was not the Legislature's intent.

**Section 7** amends s. 947.1405(2), F.S., to expand the criteria for an inmate to become eligible for conditional release. The bill provides that any inmate convicted of committing any of the following offenses on or after July 1, 2006, will be eligible for conditional release:

- Aggravated stalking, under s. 784.048, F.S.;
- Kidnapping, under s. 787.01, F.S.;
- False Imprisonment, under s. 787.02, F.S.;
- Luring or enticing a child, under s. 787.025, F.S.;
- Human trafficking, under s. 787.06, F.S.;

- Procuring person under age of 18 for prostitution, under s. 796.03, F.S.;
- Sexual performance by a child, under s. 827.071, F.S.;
- Computer pornography, under s. 847.0135, F.S.;
- Transmission of pornography by electronic device or equipment, under s. 847.0137, F.S.;
- Transmission to a minor of material harmful to minors by electronic device or equipment, under s. 847.138, F.S.; or
- Selling or buying of minors, under s. 847.0145, F.S.

As previously stated, in Finding #5 of the report by the Jessica Lunsford Task Force, the task force found that while Section 12 of the JLA included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if “the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older,” these are not offenses subject to conditional release supervision under the law.

Consistent with its Recommendation #5, which was to “[c]larify existing legislation to ensure consistent implementation of the Jessica Lunsford Act in the state,” the task force included proposed language to amend the eligibility criteria for conditional release supervision in s. 947.1405(2), F.S., to include sexual performance by a child and selling or buying of minors--two offenses specified in the electronic monitoring provision--and to also add several additional serious offenses to the eligibility criteria. These changes mirror proposed language from the task force.

**Section 8** provides that the bill takes effect on July 1, 2006.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference estimates that the bill will have an insignificant prison bed impact.

The Florida Department of Law Enforcement (FDLE) estimates that the cost to implement and maintain the functions associated with the Office of Program Policy Analysis and Government Accountability (OPPAGA) recommendation for tracking offenders who are arrested, prosecuted, and sentenced for registration violations is \$115,159.<sup>6</sup>

The details of FDLE’s estimate are as follows:

One full-time FTE at the Government Analyst II or equivalent to perform the inter-agency coordination and data analysis needed to track the required events.	Salary Benefits Expenses	\$45,500 \$12,740 \$12,039
Contractual (database programming expertise)		
Senior Data Analyst	128 hrs @\$60/hr	\$7,680
Senior Research Associate	288 hrs @\$25/hr	\$7,200
Equipment (Increase server capacity by 2 processors)		\$20,000
Other (including licensing & maintenance of SAS & operating software for the research database (CRIS))		\$10,000
TOTAL		\$115,159

**VI. Technical Deficiencies:**

The bill title appears to misstate the description of the amendments to s. 943.043, F.S. The Legislature may wish to revise that section of the title to state: “requiring that information on the Internet registry regarding sexual predators and sexual offenders contain the county of offense, case number, and include a link to the statutory offense.”

**VII. Related Issues:**

None.

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

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<sup>6</sup> As previously discussed, sections 2 and 3 of the bill incorporate OPPAGA’s recommendations.



## **VIII. Summary of Amendments:**

None.

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

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