

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 591 CS Criminal Justice  
**SPONSOR(S):** Ambler and Simmons  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Judiciary Committee	(W/D)		
3) Justice Council	8 Y, 0 N, w/CS	Hogge	De La Paz
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Among numerous changes related to criminal justice, the bill would:

- authorize courts to order the pre-trial release of defendants charged with certain felony offenses, or having been previously convicted of such offenses, is later charged with any crime, subject to various conditions including electronic monitoring.
- authorize licensed bail bond agents to provide electronic monitoring services to defendants on pretrial release, permit a governmental entity or a licensed bail bond agent to provide these services directly or by contract with a third party vendor, permit bail bond agents to charge a fee for these services in an amount not to exceed the maximum daily rate set by the chief judge of the circuit, require the chief judge of each circuit to maintain a list of qualified vendors based on standards set forth in the bill, and create three new felony offenses relating to electronic monitoring equipment.
- authorize the Departments of Corrections (DOC) and Juvenile Justice (DJJ) to use electronic monitoring systems meeting minimum requirements and performance standards in their institutions.
- revise the meaning of permanent and temporary residence for sexual offender/predator registration.
- preempt local government residency exclusions and supersede those in existence prior to October 1, 2006, increase state-imposed residency exclusions from 1000 to 1500 feet, prohibit a sex offender/predator on conditional release from raising the inability to locate a residence in compliance with the residency exclusion as a defense to a violation of conditional release, and include libraries among prohibited employers of sexual offenders/predators with child victims.
- extend the electronic monitoring requirement to additional sexual offenses and require judges to order electronic monitoring if they find a violation of probation even if probation is not revoked.
- make certain additional sex-related offenses conditional release eligible, prohibit the substitution of probation for conditional release supervision for sexual offenders/predators placed on both forms of supervision, and authorize the Parole Commission to modify the terms of conditional release supervision at any time.

The state is expected to experience a negative recurring fiscal impact. See Section II. of this analysis.

Except as otherwise provided, this bill takes effect upon becoming a law.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0591c.JC.doc  
**DATE:** 4/25/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill authorizes licensed bail bond agents to provide electronic monitoring services for certain pretrial releasees; authorizes the DOC and the DJJ to use electronic monitoring in their respective institutions and to adopt rules relating thereto. The bill will require sexual offenders/predators to report a new residence to law enforcement when he or she has been residing at a location for 5 days, rather than 14 days. Additionally, the bill provides increased opportunities for subjecting these offenders/predators to electronic monitoring.

Promote personal responsibility – This bill creates new felony offenses related to tampering, misusing, or mimicking electronic monitoring equipment or the recorded data contained in the equipment.

Maintain public security – This bill authorizes electronic monitoring of certain pretrial releasees, inmates and juvenile offenders within their respective institutions, and employees and visitors of correctional and juvenile justice facilities.

Safeguard individual liberty – The bill limits employment opportunities for sexual offenders/predators and provides increased opportunities for electronic monitoring. However, these offenders/predators are in many instances under governmental supervision or subject to supervision and infringement of their liberty with regard to such ordinary liberties as choosing a residence and a place of employment. Any infringement is intended to safeguard the liberty of the public by increasing their security through increased personal accountability for sexual offenders/predators.

Empower families – The bill increases accountability for sexual offenders/predators and empowers families by increasing their security which increases their ability to function as families.

#### B. EFFECT OF PROPOSED CHANGES:

A person convicted of any of the following enumerated sexual offenses must be designated a “sexual predator.”<sup>1</sup>

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
  - a. kidnapping or false imprisonment<sup>2</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>3</sup>
  - c. lewd or lascivious offenses;<sup>4</sup>
  - d. selling or buying of minors for child pornography;<sup>5</sup> or
  - e. a violation of a similar law of another jurisdiction.
2. Any felony violation, or any attempt thereof, of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, one of the following offenses:
  - a. kidnapping, false imprisonment or luring or enticing a child<sup>6</sup> where the victim is a minor and the defendant is not the victim's parent;

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<sup>1</sup> Fla. Stat. 775.21 (2005).

<sup>2</sup> Fla. Stat. ss. 787.01 or 787.02, F.S. (2005).

<sup>3</sup> See chapter 794, F.S. (2005).

<sup>4</sup> Fla. Stat. s. 800.04, F.S. (2005).

<sup>5</sup> Fla. Stat. s. 847.0145, F.S. (2005).

<sup>6</sup> Fla. Stat. s. 787.025, F.S. (2005).

- b. sexual battery;<sup>7</sup>
- c. procuring a person under the age of 18 for prostitution;<sup>8</sup>
- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;<sup>9</sup>
- f. promoting sexual performance by a child;<sup>10</sup>
- g. selling or buying of minors for child pornography; or
- h. a violation of a similar law of another jurisdiction.<sup>11</sup>

In contrast, a *sexual offender*, as used for purposes of the state registration requirement, means<sup>12</sup> a person convicted of committing, or attempting to commit, any of the offenses identified in 2., above, or the offense of selling or showing obscenity to a minor<sup>13</sup> or using a computer to solicit sexual conduct of or with a minor.<sup>14</sup>

As of April 7, 2006, there were 5,789 sexual predators and 31,825 sexual offenders on the state registry.

Additional background information is presented in the discussion of “Proposed Changes” below.

## **Proposed Changes**

### Registration

The bill would:

--revise the definition of the terms “permanent residence” and “temporary residence” for purposes of sexual predator and sexual offender registration requirements. A permanent residence would be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days as under current law. A temporary residence would be defined as a place where a person abides, lodges, or resides for a period of 5 (rather than 14) or more days in the aggregate during any calendar year and which is not the person’s permanent residence.

*[Currently, sexual predators must register within 48 hours after establishing permanent or temporary residence. A “permanent residence” is a place where the person abides, lodges, or resides for 14 or more consecutive days while a “temporary residence” is defined as a place where the person abides, lodges or resides for a period of 15 or more days in the aggregate during any calendar year and which is not the person’s permanent residence. The term also includes a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person’s permanent residence, including any out-of-state address. A sexual predator must report in person every six months to the sheriff’s office in the county in which he or she resides to reregister. A sexual predator’s failure to comply with registration requirements is a third degree felony.]*

*Sexual offenders are required to report and register in a manner similar to a sexual predator. The definition of the terms “temporary residence” and “permanent residence” are the same as*

<sup>7</sup> Excluding Fla. Stat. ss. 794.011(10) and 794.0235 (2005), except under the “second strike” provision.

<sup>8</sup> Fla. Stat. s. 796.03, F.S. (2005).

<sup>9</sup> Fla. Stat. s. 825.1025(2)(b) (2005).

<sup>10</sup> Fla. Stat. s. 827.071 (2005).

<sup>11</sup> Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [Fla. Stat. ss. 847.0133 or 847.0135 (2005)].

<sup>12</sup> Fla. Stat. 943.0435(1)(a) (2005).

<sup>13</sup> Fla. Stat. s. 847.0133 (2005).

<sup>14</sup> Fla. Stat. s. 847.0135 (2005).

*those under the sexual predator statute. The failure of a sexual offender to comply with the registration requirements is a third degree felony.]*

--add libraries (whether public or private) to the list of entities law enforcement must notify when a sexual predator establishes a residence.

*[Currently, law enforcement agencies must notify schools and day care centers within a 1-mile radius of the presence of the residence of a sexual predator.<sup>15]</sup>*

### Residency exclusions

The bill would:

--preempt local government residency exclusions and supersede/nullify those in existence prior to October 1, 2006.

*[Over the past year, a large number of Florida cities and counties have passed their own residency exclusions. Distances vary from 100 feet to as much as 3000 feet,<sup>16</sup> and the benchmarks include everything from schools to churches to beaches. A recent survey indicated that at least 53 cities and 3 counties had imposed a residency exclusion. Ordinances were pending in an additional 17 communities.]*

--include residency exclusions among the laws a judge may not exempt a sexual predator from as part of a court order.

*[Currently, the list includes the requirements for sexual predator designation and registration.]*

--extend, from 1000 feet to 1500 feet, the residency exclusion for persons committing certain specified sexual offenses on or after October 1, 2006, and the residency exclusion applicable to the terms and conditions of probationers and conditional releasees committing certain specified offenses after October 1, 2006, and add libraries to the list of landmarks to which the residency exclusion would apply. The bill would apply the same method for calculating the distance as that currently found in the exclusion applicable to probationers. It also would add two additional offenses to the list of offenses for which an offender may be subjected to a residency exclusion.

*[Since 2004, it has been unlawful for a person convicted of certain<sup>17</sup> specified sexual offenses on or after October 1, 2004, against a child under the age of 16 to live within 1,000 feet of a school, day care center, park or playground.<sup>18</sup> A violation of this residency exclusion is punishable as a third degree felony or first degree misdemeanor depending on the severity of the underlying offense.<sup>19</sup> Additionally, probationers<sup>20</sup> and conditional releasees<sup>21</sup> convicted of specified sexual offenses are prohibited from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate, if the victim was under the age of 18, as a mandatory special condition of their probation or conditional release.*

*Current law specifies that the distance must be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, day care center, park, playground,*

<sup>15</sup> Fla. Stat. s. 775.21(7) (2005).

<sup>16</sup> The vast majority, 47 of 56, impose a 2500 feet exclusion zone.

<sup>17</sup> Fla. Stat. ss. 794.011, 800.04, 827.071 and 847.0145 (2005).

<sup>18</sup> Fla. Stat. s. 794.065(1) (2005).

<sup>19</sup> Fla. Stat. s. 794.065(2) (2005).

<sup>20</sup> Fla. Stat. s. 948.30(1)(b) (2005).

<sup>21</sup> Fla. Stat. s. 947.1405(7)(a)2.c. (2005).

*or other place where children congregate and may not be measured by a pedestrian route or automobile route.<sup>22]</sup>*

--provide that given the compelling state interest in protecting the public from sexual offenders and predators, that in a hearing involving an alleged violation conditional release for failure to comply with the residency exclusion, the inability of the releasee to locate a residence in compliance with the residency exclusion shall not be a defense to the finding of a violation of conditional release.

### Employment restrictions

The bill would add libraries to the list of prohibited places of employment as a separate criminal offense under ch. 775, F.S., for certain sexual predators (i.e., those whose victims were minors) and as violation of a special term of conditional release under ch. 947, F.S. (i.e., those whose victims were under 18).

*[Currently, the list of prohibited places of employment constituting a separate criminal offense under ch. 775, F.S., punishable as a third degree felony, includes a business, school, day care center, park, playground, or other place where children regularly congregate.<sup>23</sup> In the case of conditional release, this restriction is imposed as a mandatory special condition of conditional release.<sup>24</sup> With regard to probation, the current list of prohibited places includes all of those currently applicable to ch. 775, F.S., and conditional release, but also specifically includes zoos, theme parks, malls, and pet stores.<sup>25]</sup>*

### Pretrial Release

This bill would expressly authorize courts to order the pre-trial release of defendants charged with a forcible felony or a sex offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

*[Currently, electronic monitoring may be imposed as a condition of pretrial release.<sup>26</sup> Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.<sup>27</sup> If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>28</sup>*

*Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.<sup>29</sup> Bail bond agents do not pay the bail amount, but instead act as a surety, promising to pay the bail amount if the defendant absconds. If the defendant absconds, bail bond agents are authorized*

<sup>22</sup> Fla. Stat. s. 948.30(1)(b) (2005).

<sup>23</sup> Fla. Stat. s. 775.21(10)(b) (2005).

<sup>24</sup> Fla. Stat. s. 947.1405(7)(a)6. (2005).

<sup>25</sup> Fla. Stat. s. 948.30(1)(f) (2005).

<sup>26</sup> Fla. Stat. s. 907.041(4) (2005).

<sup>27</sup> The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(a), Fla. R. Crim. Proc.

<sup>28</sup> Rule 3.131(a), Fla. R. Crim. Proc.

<sup>29</sup> Fla. Stat. s. 648.25 (2005) defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

*to locate, detain, and bring the defendant before the sheriff. Florida bail bond agents are licensed through the Department of Financial Services.]*

### Electronic monitoring

The bill would:

--permit a governmental entity or a licensed bail bond agent meeting certain requirements to provide electronic monitoring services directly or by contract with a third party vendor. If provided through a third party vendor, the bail bond agent would retain primary responsibility for the monitoring. The electronic monitoring device must be capable of identifying the defendant's geographic position to within a certain distance using GPS technology. Defendants would be required to pay a reasonable fee for monitoring services provided by or through a bail bond agent in an amount not to exceed the maximum daily fee set annually by the chief judge of the judicial circuit. Those providing electronic monitoring services would be absolved from any liability for equipment failure or criminal acts by the defendant. Those providing electronic monitoring services would be required to report known violations by the defendant to the appropriate authority.

*[Currently, Florida Statutes do not specifically authorize or preclude any entity from providing electronic monitoring services. These services are provided by private companies that contract with the involved agency (e.g., DOC, DJJ, counties).]*

--require the chief judge of each circuit to maintain a list of licensed bail bond agents qualified to serve as vendors of electronic monitoring equipment and services pursuant to certain specified requirements, including standards approved by the Federal Communications Commission, and being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant. The chief judge would be required to remove a registered vendor from the list if the vendor fails to comply with the requirements to qualify as a vendor, properly monitor a defendant, or charge defendants a fee exceeding that authorized by the chief judge, or pleads guilty or nolo contendere to, or is convicted of, a felony.

--authorize the DOC and the DJJ to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires that the systems used meet certain minimum specifications and be consistent with certain other functional and technological performance standards such as those relating to alarm speed, storage capacity, battery life, and accuracy of proximity to location.

*[At this time, neither the DOC nor the DJJ utilize electronic monitoring systems in their respective institutions. Florida Statutes do not currently provide manufacturing standards for electronic monitoring equipment.]*

--extend the current requirement that the Parole Commission require electronic monitoring for certain sex offenses to two additional offenses—kidnapping and false imprisonment when the offense involves sexual involvement with child victims.<sup>30</sup> This would also be made applicable to probationers.

--require judges to order electronic monitoring not only when they revoke the probation of a sex offender or predator following a violation of probation (as under current law), but also order it when there is a violation even if they do not revoke probation.

*[Currently, the requirement that judges order electronic monitoring for sex offender probationers applies when a judge revokes the probation of a sex offender or predator following a violation of probation. It is not required in those situations where a judge finds a violation, but chooses not to revoke probation.]*

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<sup>30</sup> Fla. Stat. s. 787.01(3)(a) 2., 3., 4., or 5. (kidnapping) and s. 787.02(3)(a) 2., 3., 4., or 5 (false imprisonment) (2005).

--create three new third degree felony offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility.<sup>31</sup> Since these newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code, the third degree felonies will default to a Level 1 offense.

### Conditional release

The bill would:

--make four additional sex-related offenses conditional release eligible, two of which are offenses for which electronic monitoring is required under the Jessica Lunsford Act. The four are kidnapping of a child,<sup>32</sup> false imprisonment<sup>33</sup> of a child, sexual performance by a child,<sup>34</sup> and selling or buying minors.<sup>35</sup>

*[Under the Jessica Lunsford Act, two of the four—sexual performance by a child and selling or buying minors—are offenses requiring the Parole Commission to impose electronic monitoring, yet they have not been included as a conditional release-eligible offense. Therefore, the Commission has no authority over those convicted of a violation of these two crimes.]*

--prohibit the substitution of probation for conditional release supervision for sexual predators placed on both conditional release supervision and probation.

--expressly authorize the Parole Commission to modify the terms of conditional release supervision at any time as warranted in the interest of public safety.

--prior to a judge releasing a sex offender with or without bail after a violation of probation, require a judge to find the probationer “poses no danger” to the public.

*[Currently, the court must find that the probationer “is not a danger” to the public. It adds as a factor for the judge to consider in making that assessment “whether the probationer is subject to electronic monitoring.”]*

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 648.387, F.S., relating to the provision of electronic monitoring services by licensed bail bond agents.

**Section 2.** Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act; revising definitions, legislative findings, and penalties.

**Section 3.** Creates s. 775.215, F.S., providing for preemption of local government residency exclusions and repeal of existing residency exclusions.

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<sup>31</sup> These are: 1) intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment used to monitor a person in a DOC/DJJ facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs; 2) developing, building, creating, possessing, or using any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor a person in a DOC/DJJ facility; and 3) intentionally altering, tampering with, damaging, or destroying specific data stored by any electronic monitoring equipment used to monitor a person in a DOC/DJJ facility unless done so with written permission from an authorized department official or in compliance with a data-retention policy of the department adopted by rule.

<sup>32</sup> Fla. Stat. s. 787.01(3)(a) 2., 3., 4., or 5. (kidnapping) (2005).

<sup>33</sup> Fla. Stat. s. 787.02(3)(a) 2., 3., 4., or 5. (false imprisonment) (2005).

<sup>34</sup> Fla. Stat. s. 827.071 (promoting sexual performance by a child) (2005).

<sup>35</sup> Fla. Stat. s. 847.0145 (2005).

**Section 4.** Amends s. 775.24, F.S., relating to the duty of the court to uphold certain laws governing sexual predators/offenders.

**Section 5.** Amends s. 794.065, F.S., relating to unlawful place of residence for persons convicted of certain sex offenses.

**Section 6.** Creates s. 907.06, F.S., relating to electronic monitoring of certain persons on pretrial release.

**Section 7.** Creates s. 907.07, F.S., requiring the chief judge of each circuit to maintain a list of licensed bail bond agents qualified to serve as vendors of electronic monitoring equipment and services pursuant to certain specified requirements.

**Section 8.** Creates s. 907.08, F.S., providing standards for privately owned electronic monitoring systems.

**Section 9.** Creates s. 907.09, F.S., providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device.

**Section 10.** Creates s. 944.161, F.S., providing for electronic monitoring within correctional facilities.

**Section 11.** Amends s. 947.1405, F.S., relating to the conditional release program, effective July 1, 2006.

**Section 12.** Amends s. 947.141, F.S., relating to violations of conditional release, effective July 1, 2006.

**Section 13.** Amends s. 948.06, F.S., relating to violation of probation or community control.

**Section 14.** Amends s. 948.063, F.S., relating to violations of probation by designated sexual offenders/predators.

**Section 15.** Amends s. 948.30, F.S., relating to additional terms of probation for certain sexual offenses, effective September 1, 2006.

**Section 16.** Creates s. 985.4047, F.S., providing for electronic monitoring within juvenile facilities.

**Section 17.** Except as otherwise provided, this bill takes effect October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Recurring

The bill is expected to result in a significant increase in expenditures, due primarily to a significant increase in the number of sexual offenders/predators that will be placed on electronic monitoring as the terms of the bill take effect. According to the DOC, this bill could result in an estimated 750



sexual predators/offenders being placed on electronic monitors in FY 2006-07. At the average per diem rate pursuant to DOC contracts,<sup>36</sup> and assuming monitors are placed on this population beginning on the effective date of this bill, the total additional cost for monitoring devices for FY 2006-07 would be an estimated \$1.36M. For FY 2007-08, the number of additional offenders subject to electronic monitoring is projected to climb to 1,345, for an estimated fiscal impact of \$3.3M. For FY 2008-09, the number of additional offenders subject to electronic monitoring is projected to climb to 2,084, for an estimated fiscal impact of \$5.1M. These expenditures do not include any expenditures associated with any additional workload, if applicable.

#### Nonrecurring

In addition, the DOC is expected to experience a nonrecurring negative impact of \$70,600 resulting from changes in the definitions relating to temporary and permanent residence for purposes of sexual predator/offender.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed bail bond agents meeting the requirements of the bill will benefit in that they will be permitted to recover a fee for providing electronic monitoring services. Additionally, companies meeting the requirements specified in the bill may benefit by becoming eligible to provide electronic monitoring services at correctional and juvenile justice facilities.

The number of vendors with electronic monitors capable of meeting the specifications provided in the bill to provide monitoring services for pre-trial releasees and at DOC and DJJ facilities is uncertain.

#### D. FISCAL COMMENTS:

Since the bill does not require the DOC or the DJJ to use electronic monitoring within their facilities, no fiscal impact results from this provision of the bill and therefore no specific fiscal impact is included in this analysis. However, both the DOC and the DJJ point out that the impact would be substantial if they were required to use electronic monitoring within their facilities in accordance with the terms specified in this bill.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

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<sup>36</sup> The cost is calculated using a per diem unit cost of \$6.71, the result of averaging the unit cost for North Florida and South Florida under two recent DOC contracts with vendors.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill provides a general grant of rulemaking power to the Departments of Corrections and Juvenile Justice to implement the bill's provisions (lines 396-398 and lines 519-521). The bill appears to give sufficient rule making authority that is appropriately limited.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 25, 2006, the Justice Council adopted a strike-all amendment. The amendment differs from the CS adopted by the Criminal Justice Committee in that the amendment makes numerous, largely technical, changes and a host of other substantive changes related to criminal justice, as follows:

- limits the fees bail bond agents may charge pre-trial releasees for electronic monitoring services to the maximum amount permitted by the chief judge of the circuit.
- restructures the proposed specifications for electronic monitoring devices within DOC and DJJ facilities.
- extends the current requirement for electronic monitoring for certain additional sexual offenses.
- revises the definition of permanent and temporary residence for purposes of sexual offender/predator registration.
- requires judges to order electronic monitoring if they find a violation of probation by sexual offenders/predators even if they do not revoke probation.
- preempts local government residency exclusions and supersede/nullify those in existence prior to October 1, 2006, and extend state-imposed residency exclusions from 1000 to 1500 feet.
- prohibits sex offenders/predators on conditional release from raising the inability to locate a residence in compliance with the residency exclusion as a defense to a violation of conditional release.
- includes libraries among the prohibited employers of sexual offenders or predators with child victims.
- makes child kidnapping and false imprisonment involving sexual activity with a child, sexual performance by a child, and selling or buying minors conditional release eligible offenses.
- prohibits the substitution of probation for conditional release supervision for sexual offenders/predators placed on both conditional release and probation and authorizes the Parole Commission to modify the terms of conditional release supervision at any time in the interest of public safety.

On February 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment:

- removed provisions of the bill relating to post-release offenders;
- defined the terms "violent felony offense" and "sex-related offense;"

- corrected grammatical and technical errors; and
- eliminated the term “Radio Frequency Identification Technology” from the bill.