

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7117 PCB CRJU 06-03 Sexual Predators and Offenders  
**SPONSOR(S):** Criminal Justice Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	8 Y, 0 N	Kramer	Kramer
1)			
2)			
3)			
4)			
5)			

**SUMMARY ANALYSIS**

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. The bill had an effective date of September 1, 2005. Section 21 of the act amended section 1012.465, F.S. to require noninstructional contractual personnel who are permitted access on school grounds when students are present to meet level 2 screening requirements. After the legislative session, school districts and businesses contracting with school districts expressed concerns with this provision of the bill.

Currently, a sexual predator or a sexual offender is required to obtain a driver's license or identification card as a part of the registration process. The bill requires that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have markings on the front of the card indicating the section of statute under which they are registered. The bill provides that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered. A violation of this provision will be a third degree felony.

The bill provides that a sexual predator or sexual offender is not permitted to be on school grounds for business or employment purposes. The bill requires a person on school grounds for business or employment purposes (other than individuals otherwise required to undergo a federal and state criminal history check) to carry his or her driver's license or identification card and present it upon request. The bill provides that before allowing an employee to have access to school grounds, a contractor will be required to provide the school district with certification that the contractor has examined their employee's driver's license or identification card and confirmed that the driver's license or identification card does not indicate that the person is a sexual predator or sexual offender; and has checked the individual against the National Sex Offender Public Registry and confirmed that nothing in that registry requires that the individual be denied access to school grounds.

The bill also authorizes a superintendent, on a case-by-case basis to require any authorized individual to undergo a fingerprint-based background screening and meet level 2 screening requirements.

Except where otherwise provided, the bill has an effective date of July 1, 2006.

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

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 DATE: 3/14/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may limit the number of individuals who are required to undergo a state and federal criminal history check.

Safeguard individual liberty/Promote personal responsibility: The bill will require sexual predators and sexual offenders to have a marking on their driver's license or identification card indicating the section of statute under which they are registered.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Additionally, section 21 of the act amended section 1012.465, F.S. Prior to this bill, this section had required noninstructional school district employees or contractual personnel who had direct contract with students or had access to or control of school funds to meet level 2 screening requirements as described in s. 1012.32, F.S.<sup>1</sup> The bill expanded this requirement to contractual personnel who are permitted access on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

A level 2 screening includes a statewide criminal records check through the Florida Department of Law Enforcement (FDLE) and a federal criminal records check through the Federal Bureau of Investigation (FBI).<sup>2</sup> Section 1012.32, F.S. provides persons "found through fingerprint processing to have been convicted of a crime involving *moral turpitude* shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students."

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the federal check. FDLE sends the results of the state and federal check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the legislative session, school districts and businesses that contract with school districts expressed difficulties in implementing the criminal history screening provisions of the bill. The most common complaints can be characterized as follows:

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<sup>1</sup> Additionally, section 943.04351, F.S. requires that "a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement".

<sup>2</sup> See ss. 1012.465(2) and 435.04, F.S.

- Many contractors work in multiple school districts throughout the state and have been required to undergo a separate criminal history check for each school district. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors claimed that some school districts have charged processing fees for a criminal history screening that are cost prohibitive, particularly if a business has many employees who conduct business in multiple school districts.
- School districts and contractors expressed confusion as to who should be considered contractual personnel and what should be considered school grounds.
- Because there is no statutory definition of the term “moral turpitude”, interpretation is left to the school districts. Contractors have claimed that this results in inconsistency – based on different interpretations of the phrase, a contractor could be permitted to work in one school district and barred from working in another. Further, contractors have complained that they have been barred from working in a school district for what they consider minor criminal offenses or offenses that were committed many years ago.
- Contractors who are required to undergo level 2 checks for their other employment have complained that school districts have required them to undergo an additional screening to be permitted on school grounds when students are present.

FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

Sexual Predator Registration: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a “sexual predator.” Specifically, a person must be designated a sexual predator if he or she has been convicted of:

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>3</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>4</sup>
  - c. lewd or lascivious offenses;<sup>5</sup>
  - d. selling or buying a minors for child pornography;<sup>6</sup> or
  - e. a violation of a similar law of another jurisdiction.
2. Any felony violation 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>7</sup> where the victim is a minor and the defendant is not the victim's parent,
  - b. sexual battery;<sup>8</sup>
  - c. procuring a person under the age of 18 for prostitution;<sup>9</sup>

<sup>3</sup> s. 787.01, F.S. or s. 787.02, F.S.,

<sup>4</sup> See chapter 794, F.S.

<sup>5</sup> s. 800.04, F.S.

<sup>6</sup> s. 847.0145, F.S.

<sup>7</sup> s. 787.025, F.S.

<sup>8</sup> Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

<sup>9</sup> s. 796.03, F.S.

- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;<sup>10</sup>
- f. promoting sexual performance by a child;<sup>11</sup>
- g. selling or buying a minors for child pornography; or
- h. a violation of a similar law of another jurisdiction.<sup>12</sup>

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. 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.<sup>13</sup>

A sexual predator's failure to comply with registration requirements is a third degree felony.<sup>14</sup> A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.<sup>15</sup>

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

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<sup>10</sup> s. 825.1025(2)(b), F.S.

<sup>11</sup> s. 827.071, F.S.

<sup>12</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 [ss. 847.0133 or 847.0135, F.S.]

<sup>13</sup> s. 775.21(8), F.S.

<sup>14</sup> s. 775.21(10), F.S.

<sup>15</sup> S. 775.21(10)(b), F.S.

- a. kidnapping, false imprisonment or luring or enticing a child<sup>16</sup> where the victim is a minor and the defendant is not the victim's parent;
- b. sexual battery;<sup>17</sup>
- c. procuring a person under the age of 18 for prostitution;<sup>18</sup>
- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;<sup>19</sup>
- f. promoting sexual performance by a child;<sup>20</sup>
- g. selling or buying a minors for child pornography;
- h. selling or showing obscenity to a minor;<sup>21</sup>
- i. using a computer to solicit sexual conduct of or with a minor;<sup>22</sup>
- j. transmitting child pornography;<sup>23</sup>
- k. transmitting material harmful to minors;<sup>24</sup>
- l. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.<sup>25</sup> According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

### **Provisions of HB 7117**

*Driver's license/identification card:* The bill amends s. 322.141, F.S. effective August 1, 2006, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have on the front of the card the following:

- For a person designated as a sexual predator under s. 775.21, the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, the marking "943.0435, F.S."

The bill amends s. 322.212, F.S., effective August 15, 2006, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141 are not displayed or have been altered. A violation of this provision will be a third degree felony.<sup>26</sup>

The bill amends the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3).

*Background screening:* As discussed above, the Jessica Lunsford Act, s. 1012.465, F.S. added the requirement that noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present be required to undergo level 2 screening to the

<sup>16</sup> s. 787.025, F.S.

<sup>17</sup> Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

<sup>18</sup> s. 796.03, F.S.

<sup>19</sup> s. 825.1025(2)(b), F.S.

<sup>20</sup> s. 827.071, F.S.

<sup>21</sup> s. 847.0133, F.S.

<sup>22</sup> s. 847.0135, F.S.

<sup>23</sup> s. 847.0137, F.S.

<sup>24</sup> s. 847.0138, F.S.

<sup>25</sup> <http://www.nsopr.gov/>

<sup>26</sup> s. 322.

previous requirement applying to noninstructional school district employees or contractual personnel who have direct contact with students or access to school funds.

The bill amends this section to provide that the following individuals must meet level 2 screening requirements as described in s. 1012.32:

1. Noninstructional school district employees who have direct contact with students.
2. Other individuals who are specifically authorized by the school district to perform services for compensation that involve direct contact with students.
3. Noninstructional school district personnel who have access to or control of school funds.
4. Any other individuals who, for compensation, are authorized to have access to or control of school funds.

The bill creates s. 1012.4561, F.S. to provide that an authorized individual who is a sexual predator or sexual offender or who appears on the National Sex Offender Public Registry maintained by the United State Department of Justice shall not be entitled to be present on school grounds. The term "authorized individual" is defined as "any individual who is authorized to have access to school grounds<sup>27</sup> for *business or employment purposes* when students are present, other than a school district employee or any other individual referred to in s. 1012.465(1).<sup>28</sup> An authorized individual who is present on school grounds in violation of this provision commits a first degree misdemeanor.

The bill provides that before allowing an authorized individual to have access to school grounds, a contractor<sup>29</sup> must provide the school district with certification that the contractor has:

1. For an individual who holds a state driver's license or identification card, examined the individual's driver's license or identification card and confirmed that the driver's license or identification card does not indicate that the person is a sexual predator or subject to registration as a sexual offender; and
2. Checked the individual against the National Sex Offender Public Registry and confirmed that nothing in that registry requires that the individual be denied access to school grounds.

The contractor will be required to make its records supporting the certification available for inspection at the request of the school district. A person who knowingly and willfully violates this section and who hold a professional license under chapter 455 or 465 commits an act constituting grounds for discipline.

Each authorized individual who has been issued a state driver's license or identification card must possess the card at all times while working on school grounds and must show the card to any school district employee upon request. Each authorized individual who has not been issued or does not have in his or her possession a state driver's license or identification card will be required to submit to a

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<sup>27</sup> The term "school grounds" is defined by the bill as follows:

"School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, together with the school district land on which the buildings are located. The term "school grounds" does not include:

1. Any other facilities or locations where school classes or activities may be located or take place;
2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or contiguous school district land during any time period in which students are not permitted access; or
3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004.

<sup>28</sup> As described above, s. 1012.465(1) will require level 2 criminal history checks for certain individuals.

<sup>29</sup> The bill defines the term "contractor" as follows:

"Contractor" means a person or an entity, regardless of form, that is engaged by the school district to provide goods or services and that, in furtherance of such engagement, employs authorized individuals or subcontracts with others who employ authorized individuals. The term "contractor" also includes an authorized individual who is directly engaged by the school district to provide goods or services.

check against the National Sex Offender Public Registry upon request of any school district employee to confirm that nothing in that registry requires that the individual be denied access to school grounds.

Each authorized individual must inform his or her employer or the party with whom he or she is under contract within 48 hours if charged, while he or she is employed or under contract in that capacity, with an offense for which a conviction could lead to the person being designated a sexual predator or subject to registration as a sexual offender.

The bill also authorizes a superintendent, on a case-by-case basis to require any authorized individual to undergo a fingerprint-based background screening and meet level 2 screening requirements as described in s. 1012.32. A recheck of such authorized individual must be performed once every 3 years. The bill requires that for the initial check, each individual subject to the criminal history check must file a set of fingerprints. Fingerprints will be submitted to FDLE for state processing and to the Federal Bureau of Investigation (FBI) for federal processing. The results of each fingerprint-based check must be reported to the requesting district.

The cost of the check and any re-check may be borne by the district school board, the individual fingerprinted or the individual's employer. Any fee for the initial check and each re-check charged by a district school board may not exceed the sum of fees charged by FDLE, the FBI, and the Department of Education, plus an additional administrative fee specified by the school board, which may not exceed 25 percent of the sum of the other fees specified in this paragraph. Currently, the combined fee for the FDLE and FBI check is \$47 - \$23 for the FDLE check and \$24 for the FBI check.

The bill requires FDLE to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means. The bill authorizes FDLE to adopt rules to implement this provision. For any required checks during the 3 year period subsequent to the initial check or recheck, the individual must inform the district school board requiring the check that he or she has already completed a current records check and that district must, without charge to the individual, check the individual's history using the shared system described below.

The bill requires FDLE to retain the fingerprints submitted under this provision in the statewide automated fingerprint identification system, authorizes FDLE to search all arrest fingerprint cards received against the retained fingerprints and requires the fingerprints to be purged from the statewide system three years from the date they are submitted.

The bill authorizes school boards and FDLE to adopt rules to implement the provisions of the bill.

The bill provides that the newly created s. 1012.4561, F.S. does not apply to law enforcement officers, as defined in s. 943.10, Florida Statutes, assigned by their employing agencies to work on school grounds as part of their official duties or first responder personnel responding to a request for assistance. For this purpose, the term "first responder personnel" includes law enforcement officers, as defined in s. 943.10, emergency medical technicians, paramedics, and firefighters.

The bill further provides that no provision of the newly created s. 1012.4561, F.S. shall give rise to any private civil liability, nor will the section be construed to create a private cause of action for monetary damages.

The bill has an effective date of July 1, 2006 except as otherwise provided in the act.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S. to require markings on driver's licenses or identification cards of sexual predators and sexual offenders.

Section 2. Amends s. 322.212, F.S., to make it unlawful for person to have in his or her possession driver's license or identification card without required markings.

Section 3. Amends s. 775.21, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 4. Amends s. 943.0435, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 5. Amends s. 944.607, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 6. Amends s. 1012.465, F.S. to specify individuals required to meet level 2 screening requirements.

Section 7. Creates s. 1012.4561, F.S. relating to individuals permitted access to school grounds for business or employment purposes when students are present.

Section 8. Provides effective date of July 1, 2006 except as otherwise expressly provided in the act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures: The following information was provided by the Department of Highway Safety and Motor Vehicles regarding the provision of the bill relating to the driver's license or identification card of sexual predators or sexual offenders.

	Registered Sexual Predators	3,708
	Registered Sexual Offenders	27,023
	Total	30,731
<b>Option 1</b>	Card Cost \$1.56	\$ 47,940.00
<i>w/ standard postage</i>	Postage (1st Class)	\$ 9,465.00
	Programming	\$ 30,000.00
	<b>Total</b>	<b>\$ 87,405.00</b>
<b>Option 2</b>	Card Cost \$1.56	\$ 47,940.00
<i>w/ return receipt</i>	Postage (Certified/Return receipt)	\$ 133,372.00
	Programming	\$ 30,000.00
	<b>Total</b>	<b>\$ 211,312.00</b>



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

1. Revenues:

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor if required by a district superintendent. Currently, the combined fee for the FDLE and FBI check is \$47 - \$23 to FDLE and \$24 to FBI. The bill provides that any fee for a check of state and federal criminal history that is required by a superintendent under the newly created s. 1012.4561 may not exceed the sum of fees charged by FDLE, the FBI and DOC, plus an additional administrative fee specified by the school board which may not exceed 25 percent of the sum of the other specified fees.

2. Expenditures:

None.

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

This bill may limit the number of individuals who are required to undergo the state and federal criminal history screening required under the Jessica Lunsford Act.

**D. FISCAL COMMENTS:**

None.

**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 an 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.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes FDLE to adopt rules to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts. The bill authorizes a school board to adopt rules to implement the provisions of the newly created s. 1012.4561, F.S.

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

None.

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