

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7117 CS PCB CRJU 06-03 Sexual Predators and Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	8 Y, 0 N	Kramer	Kramer
1) Education Appropriations Committee	16 Y, 1 N, w/CS	Eggers	Hamon
2) Justice Council			
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.

Under the bill, noninstructional school district employees who have direct unsupervised contact with students or access to school funds and other individuals who are authorized by the school district to perform services that involve direct unsupervised contact with students or access to school funds will be required to submit to a fingerprint based state and national criminal history check.

The bill requires a contractor to certify to the school district that individuals who have access to school grounds for business or employment purposes (other than individuals required to undergo a national and state criminal history check) are not on the National Sex Offender Public Registry. 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 to carry his or her driver's license or identification card and present it upon request.

The bill contains a \$30,000 appropriation from the Highway Safety Operating Trust Fund to the Department of Highway Safety and Motor Vehicles (DHSMV) for the 2006-2007 fiscal year for computer programming costs related to the act.

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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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 national criminal history check. The bill will require contractors to provide certification to school districts that their contract workers are not on the National Sex Offender Public Registry.

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.¹ 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 national criminal records check through the Federal Bureau of Investigation (FBI).² Section 435.04, F.S. provides that the background screenings required by the section must ensure that no persons subject to the screening have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any of a list of enumerated offenses. 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 national check. FDLE sends the results of the state and national 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.

¹ 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".

² See ss. 1012.465(2) and 435.04, F.S.

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:

- 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 imprisonment³ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;⁴
 - c. lewd or lascivious offenses;⁵
 - d. selling, buying, or transfer of custody of a minor for child pornography;⁶ 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 child⁷ where the victim is a minor and the defendant is not the victim's parent,
 - b. sexual battery;⁸

³ s. 787.01, F.S. or s. 787.02, F.S.,

⁴ See chapter 794, F.S.

⁵ s. 800.04, F.S.

⁶ s. 847.0145, F.S.

⁷ s. 787.025, F.S.

- c. procuring a person under the age of 18 for prostitution;⁹
- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;¹⁰
- f. promoting sexual performance by a child;¹¹
- g. selling, buying, or transfer of custody of a minor for child pornography; or
- h. a violation of a similar law of another jurisdiction.¹²

If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (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 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 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 or sexual offender must report in person every six months to the sheriff's office in the county in which he or she resides to reregister. The sexual predator or sexual offender is required to report to the sheriff's office during the month of his or her birthday and during the sixth month following his or her birth month.¹³

A sexual predator's failure to comply with registration requirements is a third degree felony.¹⁴ A sexual predator who has been convicted of one of the 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.¹⁵

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

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

⁹ s. 796.03, F.S.

¹⁰ s. 825.1025(2)(b), F.S.

¹¹ s. 827.071, F.S.

¹² 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.]

¹³ s. 775.21(8), F.S.

¹⁴ s. 775.21(10), F.S.

¹⁵ S. 775.21(10)(b), F.S.

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:

- a. kidnapping, false imprisonment or luring or enticing a child¹⁶ where the victim is a minor and the defendant is not the victim's parent;
- b. sexual battery;¹⁷
- c. procuring a person under the age of 18 for prostitution;¹⁸
- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;¹⁹
- f. promoting sexual performance by a child;²⁰
- g. selling, buying, or transfer of custody of a minor for child pornography;
- h. selling or showing obscenity to a minor;²¹
- i. using a computer to solicit sexual conduct of or with a minor;²²
- j. transmitting child pornography;²³
- k. transmitting material harmful to minors;²⁴
- 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.²⁵ 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, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S. or s. 944.607, the marking "943.0435, F.S."

Currently, sexual predators and sexual offenders are required to report in person each year during the month of the sexual predator's birthday and during the sixth month following the sexual predator or sexual offenders birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The bill requires a sexual predator or sexual offender to report to the DHSMV to obtain a marked driver's license or identification card during the month of their reregistration unless he or she previously secured such a marked driver's license or identification card. In order to ensure that this provision is implemented between July 1, 2006 (the effective date of the bill) and January 1, 2007, a sexual predator or sexual offender who is required to reregister during July 2006 or January 2007 will be required to report during August 2006 to receive their marked driver's license or identification card.

¹⁶ s. 787.025, F.S.

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

¹⁸ s. 796.03, F.S.

¹⁹ s. 825.1025(2)(b), F.S.

²⁰ s. 827.071, F.S.

²¹ s. 847.0133, F.S.

²² s. 847.0135, F.S.

²³ s. 847.0137, F.S.

²⁴ s. 847.0138, F.S.

²⁵ <http://www.nsopr.gov/>

The bill amends s. 322.212, F.S., to provide that on or after January 2007, 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, F.S., are not displayed or have been altered. A violation of this provision will be a third degree felony.

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), F.S.

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 meet level 2 background screening. The bill amends this section to provide that the following individuals must meet level 2 screening requirements as described in s. 435.04, F.S.:

1. Noninstructional school district employees who have direct unsupervised contact with students or who have control of school funds.
2. Other individuals who are authorized by the school district to perform services for compensation and that involve access to or control of school funds.
3. Other individuals who are authorized by the school district to perform services for compensation that involve direct, unsupervised contact with students. This requirement does not apply to any individual who, by law due to the nature of his or her occupation or business, is required to submit to a state and national criminal history check for licensing or other purposes, if such license or other certificate is current and in good standing and the individual submits proof of good standing to the district.

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. For any required checks during the 5 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.

The bill creates s. 1012.4561, F.S., to provide that a "contract worker" 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 may not be on school grounds. The term "contract worker" is defined as a contractor or any individual who has access to school grounds²⁶ for *business or employment purposes* of a contractor for compensation when students are present, other than a individual referred to in ss. 1012.56 or 1012.465(1), F.S.²⁷ A contract worker who is present on school grounds in violation of this provision commits a first degree misdemeanor.

The bill provides that before allowing a contract worker to have access to school grounds, a contractor²⁸ must provide the school district with certification that the contractor has:

²⁶ 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 an adult, career or technical center under part IV of chapter 1004.

²⁷ Individuals described in section 1012.56 and s. 1012.465(1) are required to meet level 2 screening standards.

²⁸ The bill defines the term "contractor" as follows:

"Contractor" means a person who is engaged by the school district to provide goods or services for compensation that do not involve direct, unsupervised contact with students and who employs contract workers or subcontracts with a person who

1. For an individual who holds a state driver's license or identification card, examined the contractor's worker's license or identification card and confirmed that it does not have the markings required by s. 322.141(3), F.S.
2. Checked and confirmed that the individual is not on the National Sex Offender Public Registry.

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 holds a professional license under chapter 455 or 465 commits an act constituting grounds for discipline.

Each contract worker 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 contract worker 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 check against the National Sex Offender Public Registry upon request of any school district employee.

Each contract worker must inform the contractor within 48 hours if arrested for an offense for which a conviction could lead to the person being designated a sexual predator or subject to registration as a sexual offender. A person who willfully fails to comply with this provision commits a first degree misdemeanor.

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, F.S., 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, F.S., emergency medical technicians, paramedics, and firefighters.

The bill 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 amends s. 1012.32, F.S., relating to required background screening of instructional and noninstructional school district personnel and other persons authorized by the school district to perform services for compensation, to conform this section to the changes made to other sections in chapter 1012. Section 1012.32, F.S., will set forth that the background screening will be initiated by filing with the district school board a complete set of fingerprints taken by an individual authorized to take fingerprints on behalf of an authorized law enforcement agency, a private service provider, or the school or school district. As under current law, the section will also provide for the retention of fingerprints by FDLE for the purposes of comparison against arrest fingerprint cards and will authorize the district school board to submit the fingerprints to FDLE for submission to the FBI for national rescreening.

The bill amends s. 1002.33(12), F.S., relating to charter school employees and members of the governing board of the charter school, and s. 1003.63(7), F.S., relating to employees of deregulated public schools to clarify that these individuals must undergo screening as required under s. 1012.32, F.S. Section 1012.56, F.S., relating to educator certification, is also amended to remove provisions that will now be contained in s. 1012.32, F.S.

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.

employs contract workers to provide such goods or services. "Contractor" also means an individual who is engaged by a school district to provide such goods or services for compensation."

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. 1002.33, F.S., to clarify background screening of charter school employees.

Section 7. Amends s. 1003.63, F.S., to clarify fingerprinting requirements of deregulated public schools.

Section 8. Amends s. 1012.32, F.S., to clarify background screening of employees of school districts.

Section 9. Amends s. 1012.465, F.S., to specify individuals required to meet level 2 screening requirements.

Section 10. Creates s. 1012.4561, F.S., relating to individuals permitted access to school grounds for business or employment purposes when students are present.

Section 11. Amends s. 1012.56, F.S., to specify background screening of teachers.

Section 12. Provides an appropriation.

Section 13. 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 bill contains a \$30,000 appropriation from the Highway Safety Operating Trust Fund to the DHSMV for the 2006-2007 fiscal year for computer programming costs related to the act. Any other costs associated with printing driver's licenses and identification cards with the appropriate markings may be absorbed within existing resources by the DHSMV.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

Currently, the combined fee for the background check is \$47 - \$23 to the FDLE and \$24 to the FBI. In addition, a school district may charge an administrative fee for processing the information. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject background screening.

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 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

The Education Appropriations Committee adopted a strike-all amendment which:

- Provided for the staggered implementation of the requirement that sexual predators and sexual offenders obtain drivers licenses or identification cards containing identifying markings.
- Included reference to sexual offender statute, s. 944.607, F.S., in section relating to markings on drivers licenses.
- Amended s. 1012.465, F.S., to refer to level 2 screening standards in s. 435.04, F.S., rather than "moral turpitude" standard contained in s. 1012.32, F.S.
- Modified definitions.
- Provided a \$30,000 appropriation to the Department of Highway Safety and Motor Vehicles.
- Amended cross references.