

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

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Prepared By: Criminal and Civil Justice Appropriations Committee

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BILL: CS/CS/SB 230

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Education Pre-K - 12 Committee and Senator Argenziano

SUBJECT: Sexual Predators or Offenders

DATE: April 24, 2007 REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/1 amendment</b>
2. deMarsh-Mathues	Matthews	ED	<b>Fav/CS</b>
3. Butler	Sadberry	JA	<b>Fav/CS</b>
4.			
5.			
6.			

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### I. Summary:

The bill ranks several offenses involving non-compliance with sexual offender and sexual predator reporting requirements. Other features of the bill, many of which implement recommendations of the Jessica Lunsford Task Force and the Office of Program Policy and Government Analysis (OPPAGA), include:

- Requiring the Florida Department of Law Enforcement (FDLE) to provide, when data is available, certain information in Florida's Internet registry;
- Requiring that information that is shared by FDLE with local law enforcement agencies about sexual predators and offenders must include notice to these agencies about those offenders who, upon their release from state incarceration, have no registration activity on record with the FDLE;
- Requiring that the names or identifying information of certain applicants for governmental appointment or employment who work or volunteer in places where children regularly congregate be checked against the new Dru Sjodin National Sex Offender Public Website;
- Clarifying legislative intent that electronic monitoring of certain sex offenders on probation and community control applies only to those sex offenders on probation or community control whose *felony* offense was committed on or after September 1, 2005;
- Requiring electronic monitoring of certain sex offenders on conditional release by including sexual performance by a child and selling or buying of minors in the criteria for eligibility for conditional release supervision, and adding several additional serious offenses to the eligibility criteria; and

- Requiring the FDLE to determine the feasibility of enhancing its Internet registry to include a mapping capability that may be used by individuals, local law enforcement agencies, and correctional officials.

The bill authorizes one full-time equivalent position and appropriates \$322,791 to the Department of Law Enforcement from the department's Operating Trust Fund.

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

## **II. Present Situation:**

### **The Jessica Lunsford Act and Recommendations by the Jessica Lunsford Task Force and the OPPAGA**

In 2005, the Legislature passed the Jessica Lunsford Act (JLA).<sup>1</sup> Section 6 of the JLA ranked various offenses involving a sexual predator's and sexual offender's non-compliance with registration requirements. Several offenses relevant to the failure of sexual predators and sexual offenders to comply with reporting requirements were inadvertently left unranked in the offense severity ranking chart of the Criminal Punishment Code.<sup>2</sup> Because these offenses were not given a specific ranking in the offense severity ranking chart, they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. The effect of these defaults is that the defaulted offenses, which are comparable in seriousness to the offenses ranked in the chart by the JLA, will generally not score a lowest permissible sentence of imprisonment.

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

The Jessica Lunsford Task Force,<sup>3</sup> which the JLA created and required to examine the collection and dissemination of offender information within the criminal justice system and community, released its findings and recommendations on February 6, 2006.<sup>4</sup> Relevant to Section 12 of the JLA are the task force's "Finding #5" and "Recommendation #5." In Finding #5, the task force found that while Section 12 included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law.

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<sup>1</sup> Ch. 2005-28, L.O.F.

<sup>2</sup> Section 921.0022, F.S.

<sup>3</sup> The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

<sup>4</sup> All discussion in this analysis of the task force and its findings and recommendations is from the *Jessica Lunsford Task Force: Findings & Recommendations*. Florida Department of Law Enforcement, Criminal & Juvenile Justice Information Systems. Council, *Jessica Lunsford Task Force: Findings & Recommendations* (amended version) (February 6, 2006).

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

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

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

Questions have been raised as to whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors.

Section 23 of the JLA provided that, every three years, the OPPAGA shall study the effectiveness of Florida’s sexual predator and sexual offender registration process and community and public notification. The JLA required the OPPAGA to submit its first report to the Legislature by January 1, 2006. The OPPAGA submitted the report, which included the following three recommendations:<sup>5</sup>

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

<sup>5</sup> Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Florida’s State, County, Local Authorities Are Implementing Jessica Lunsford Act*, Report No. 06-03, at page 8 (January 2006).

### Section 943.4351, F.S.

Section 943.04351, F.S., which was not amended by the JLA,<sup>6</sup> provides that, prior to making a decision whether to appoint or employ a person, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, a state agency or governmental subdivision must search the person's name or other identifying information of the person against the registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S. The search may be conducted using the Internet site of sexual predators and sexual offenders maintained by the FDLE. This section does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

The background screening requirements for instructional and noninstructional personnel do not specifically include volunteers, unless they are under contract with the school district.<sup>7</sup> Some school districts contract with volunteers and subject them to state and federal criminal history records checks. For example, Palm Beach County School District requires these background checks for volunteers participating in Junior Achievement, Foster Grandparents, and Take Stock in Children.<sup>8</sup> In August 2005, the Florida Department of Education advised school districts that volunteers are subject to a search of the sexual offender/sexual predator database.<sup>9</sup> Many districts have their own policies for volunteers.<sup>10</sup>

The federal government created a national sex offender registry, which includes information from the registries of all 50 states.<sup>11</sup> Section 943.04351, F.S., does not require a search of this registry. The search is limited to registry information maintained by the FDLE, such as information in Florida's registry. If a registered sex offender from another state whose name appears in the national registry moves to Florida and does not apprise law enforcement officers in that state or in Florida that he or she is moving to Florida, law enforcement will not know that the sex offender is in Florida, unless they acquire this information from another source. If they do not know the sex offender is in Florida, the offender's name will not appear in Florida's registry.

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<sup>6</sup> The provisions in s. 943.4351, F.S., were created in ch. 2004-81, L.O.F.

<sup>7</sup> Instructional and noninstructional personnel with direct student contact must undergo state and national criminal history records checks and meet Level 2 background screening standards. Personnel who have access to or control of school funds and contractors who are on school grounds when students are present are also subject to these requirements. Contractual personnel include vendors, individuals, or entities under contract with the school board. Sections 1012.32, 1012.465, and 1012.56, F.S.

<sup>8</sup> Palm Beach County School District Bulletin, August 5, 2005.

<sup>9</sup> Florida Department of Education, *Technical Assistance Paper – Jessica Lunsford Act*, August 2005.

[http://info.fl DOE.org/docushare/dsweb/Get/Document-3151/k12\\_05-107a.pdf](http://info.fl DOE.org/docushare/dsweb/Get/Document-3151/k12_05-107a.pdf)

<sup>10</sup> Manatee County School District, for example, requires a check of the national registry of sexual predators and offenders and may require a background check.

<sup>11</sup> See <http://www.nsopr.gov/>.

### III. Effect of Proposed Changes:

The bill mainly corrects omissions in and clarifies provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005. (See “Present Section” of this analysis for a detailed explanation).

**Section 1** ranks the following offenses in Level 7 of the offense severity ranking chart:<sup>12</sup>

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

**Section 2** amends s. 943.043, F.S., to add the following OPPAGA recommendations:

- Requires the FDLE to provide, when data is available, information in Florida’s Internet registry about the county where the qualifying sex-related offense occurred, a link to the statutory offense for which the sexual predator or offender was convicted, and the case number.
- Requires that information that the FDLE shares with local law enforcement agencies about sexual predators and offenders include notice to those agencies about those sexual predators and sexual offenders who, upon their release from state incarceration, have no registration activity on record with the FDLE within an anticipated time frame as specified under statutory registration requirements.

**Section 3** amends s. 943.0435, F.S., to incorporate a recommendation of the OPPAGA to require the FDLE, using data provided by several agencies, to report annually on violations of supervision and arrests related to the re-registration requirements imposed on sexual predators and offenders as a result of the JLA. The first report must be made to the President of the Senate, the Speaker of the House, the OPPAGA, and the Executive Office of the Governor on March 1, 2008.

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<sup>12</sup> This ranking increases the primary offense points assessed on the Criminal Punishment Code scoresheet. A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence (a scored minimum sentence) of 21 months in state prison. The sentencing range is the lowest permissible sentence up to the statutory maximum penalty for the felony degree of the offense, as provided in s. 775.082, F.S. This means the judge can legally impose a prison sentence to a term of years that is within this range.

**Section 4** amends s. 943.04351, F.S., to provide that state agencies or governmental subdivisions, 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 sex offenders maintained by the F.B.I. in the Dru Sjodin National Sex Offender Public Website.<sup>13</sup>

**Section 5** amends s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses. Specifically, effective for a probationer or community controllee whose *felony* offense was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

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

**Section 6** amends s. 947.1405(2), F.S., to expand the criteria for an inmate to become eligible for conditional release. The bill provides that any inmate convicted of committing any of the following offenses on or after July 1, 2007, will be eligible for conditional release:

- Aggravated stalking (s. 784.048, F.S.)
- Kidnapping (s. 787.01, F.S.)
- False imprisonment (s. 787.02, F.S.)
- Luring or enticing a child (s. 787.025, F.S.)
- Human trafficking (s. 787.06, F.S.)
- Procuring person under age of 18 for prostitution (s. 796.03, F.S.)
- Sexual performance by a child (s. 827.071, F.S.)
- Computer pornography (s. 847.0135, F.S.)
- Transmission of pornography by electronic device or equipment (s. 847.0137, F.S.)
- Transmission to a minor of material harmful to minors by electronic device or equipment (s. 847.138, F.S.)
- Selling or buying of minors (s. 847.0145, F.S.)

**Section 7** requires the FDLE to determine the feasibility of enhancing its Internet registry to include a mapping capability that may be used by individuals, local law enforcement agencies,

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<sup>13</sup> The search is conducted prior to any decision to appoint or employ such persons. This requirement is in addition to the current requirement to search these persons against registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S., which may include a search of Florida's registry.

and correctional officials. This mapping capability must overlay the known location of sexual offenders and sexual predators and plot its proximity to prohibited sites. The department must also project the cost of this enhancement. The FDLE must report its findings and cost estimations to the President of the Senate and the Speaker of the House by December 1, 2007.

**Section 8** provides that the bill takes effect on July 1, 2007.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides a final, official estimate of prison bed impact of legislation. At the time this analysis was completed, the CJIC had not met to consider bills. However, preliminary estimates of prison bed impact of ranking changes in the bill have been provided by the Legislature's Office of Economic and Demographic Research (EDR) and the Department of Corrections (DOC). Additionally, both FDLE and DOC have provided fiscal analyses estimating impact of other provisions of the bill on their agencies.

**Ranking offenses (Section 1 of the bill):**

The DOC's Bureau of Research and Data Analysis has determined that during the fiscal year 2005-2006 the following number of offenders were sentenced for violations of the following statutory provisions that are ranked in Level 7 by the bill:

- s. 775.21(6)(g)3., F.S. 2 sentenced to prison/2 sentenced to supervision\*
- s. 775.21(6)(i), F.S. 0 sentenced to prison/0 sentenced to supervision

- s. 775.21(6)(j), F.S. 2 sentenced to prison/2 sentenced to supervision\*<sup>14</sup>
- s. 943.0435(7), F.S. 11 sentenced to prison/81 sentenced to supervision

The DOC states that, based on this information, it would appear that the Level 7 ranking of s. 943.0435(7), F.S., would result in a shift in sentencing dispositions from supervision to prison, but would likely have an insignificant impact on the inmate population as determined by the CJIC for a similar bill. As the bill is prospective, the effects of the increase would not be immediately felt.

The EDR's preliminary estimate is that the ranking provisions of the bill will likely have an insignificant prison bed impact.

**Data coordination, gathering, tracking and reporting; website enhancement feasibility study (Sections 3 and 7 of the bill)**

According to DOC, additional programming to address reporting violations of supervision and arrests related to the reregistration requirements of sexual predators and sexual offenders will more than likely need to be completed to produce some of this information; however, the fiscal impact was not provided.

The FDLE estimates that the cost to implement the functions associated with data coordination, gathering, tracking and reporting in Section 3 of the bill, and for a feasibility study related to enhancing the sexual offender website to include a mapping capability as required in section 7 of the bill, will cost \$322,791, of which \$91,265 is recurring and \$231,526 is nonrecurring.

Category	Recurring	Non-Recurring	Total
FTE Costs	\$67,185	\$4,726	\$71,911
Contracted Services	\$14,080	\$187,400	\$201,480
Operating Capital Outlay		\$20,000	\$20,000
Other Expenses	\$10,000	\$19,400	\$29,400
<b>Total Fiscal Impact</b>	<b>\$91,265</b>	<b>\$231,526</b>	<b>\$322,791</b>

**National sex offender registry check (Section 4 of the bill):**

The DOC estimates this provision will have only a minor impact on the DOC as potential employers may also contact the DOC for information about offenders listed on the registry as under supervision.

Staff notes that state agencies and governmental subdivisions required under this section to conduct a national sex offender registry search are already required under current law to conduct a search of Florida registry information. Therefore, the impact, if any, on these agencies and subdivisions appears to be minimal.

<sup>14</sup> The first and third bullets denoted with asterisks share the same offense code; therefore, DOC cannot distinguish from its codes whether the 2 prison admissions and 2 supervision admissions violated s. 775.21(6)(g)3., F.S., or s. 775.21(6)(j), F.S.

**Conditional release eligibility criteria changes (Section 6 of the bill):**

The DOC states: "As this section of the bill is prospective, combined with the length of time the offender will serve in prison upon conviction for one of these offenses, there will not be an immediate impact on Community Corrections." According to the Bureau of Research and Data Analysis, the expected increase in the number of conditional release offenders received for supervision over the next 10 years will be minimal under the provisions of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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

None.

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