

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 455 Sex Offenses

**SPONSOR(S):** Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; Glorioso and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cunningham	Cunningham
2) Appropriations Committee	20 Y, 0 N, As CS	Toms	Leznoff
3) Judiciary Committee	17 Y, 0 N, As CS	Cunningham	Havlicak

### SUMMARY ANALYSIS

House Bill 455 amends a variety of statutes related to sexual offenders to bring them further in line with the federal Adam Walsh Act. Specifically, the bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the following offenses to the list of offenses that qualify a person as a sexual predator and sexual offender:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
- Section 394.4593(2), F.S. (sexual misconduct with a patient)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

The bill also:

- Requires sexual predators and offenders to provide the sheriff and FDLE any Internet identifier the offender uses and defines the term "Internet identifier."
- Requires sexual offenders and predators to provide information about their passport, immigration status, vehicles, professional licenses, and other specified information to the sheriff as part of the registration process.
- Permits specified sexual offenders to petition the court for removal from the requirement to register as a sexual offender if 15 years have elapsed since the offender's registration period began and if other criteria are met.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry pursuant to s. 943.04354, F.S.
- Requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website.
- Increases the penalty for third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs), from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony.
- Requires sexual offenders who are arrested for another offense (other than a misdemeanor offender under ch. 316, F.S.), to be held until first appearance in order to ensure the full participation of the prosecutor and the protection of the public.
- Makes technical corrections to the Criminal Punishment Code; offense severity ranking chart.
- Requires courts to impose electronic monitoring as a condition of supervision for offenders convicted of certain sex offenses.

On January 30, 2012, the Criminal Justice Impact Conference determined that HB 7047, which is substantially similar to this bill, would have an insignificant prison bed impact. The bill will have a negative fiscal impact for the Department of Juvenile Justice, and the Florida Department of Law Enforcement. The bill may also have a jail bed impact. The bill provides funding for the Department of Corrections to implement new electronic monitoring requirements. See fiscal section.

The bill is effective October 1, 2012.

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

STORAGE NAME: h0455e.JDC

DATE: 2/23/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Sexual Predator Qualifying Offenses**

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian.
  - Section 794.011, F.S. (sexual battery)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian.
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.<sup>1</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0135(5), F.S. (computer pornography)
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
  - The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

#### *Effect of the Bill*

The bill amends s. 775.21, F.S., to add the following qualifying offenses to the list of offenses contained in 2. (enumerated above):

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
- Section 394.4593(2), F.S. (sexual misconduct with a patient)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

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<sup>1</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

## Sexual Offender Qualifying Offenses

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term “sexual offender,” in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian.
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>2</sup> imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term “sexual offender” that include the list of qualifying offenses enumerated above.

### *Effect of the Bill*

The bill amends the definition of the term “sexual offender” in ss. 943.0435, 944.606, and 944.607, F.S., to add the following qualifying offenses:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
- Section 394.4593(2), F.S. (sexual misconduct with a patient)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

## Sexual Predator and Sexual Offender Registration

In very general terms, the distinction between a sexual predator and a sexual offender depends 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.<sup>3</sup> A sexual predator or sexual offender must comply

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<sup>2</sup> A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

<sup>3</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

with a number of statutory registration requirements.<sup>4</sup> Failure to comply with these requirements is generally a third degree felony.<sup>5</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>6</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department.<sup>7</sup> The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.<sup>8</sup>

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>9</sup> For example, a predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.<sup>10</sup> In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.<sup>11</sup>

#### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders to provide the following registration information:

- Information about any tattoos or other identifying marks the offender may have.
- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- The make, model, color, registration numbers, and license tag number of all vehicles the offender owns.
- Palm prints.
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.
- Information about any professional licenses the offender may have.
- Whether the offender is volunteering at an institution of higher education.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Require sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of five days or more is outside of the United States.
- Require sexual predators and offenders who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.
- Require FDLE to notify the applicable law enforcement agency in the country where the offender intends to reside.

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<sup>4</sup> *Id.*

<sup>5</sup> Sections 775.21(10) and 943.0435(14), F.S.

<sup>6</sup> *See* ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>7</sup> *See* generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

- Provide that an offender who knowingly provides false registration information by act or omission commits a 3<sup>rd</sup> degree felony (this provision is also added to ss. 944.607 and 985.4815, F.S.).

### **Sexual Predator / Offender Registration - Instant Message Name**

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.<sup>12</sup> Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.<sup>13</sup>

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term “instant message name” as “an identifier that allows a person to communicate in real time with another person using the Internet.”

#### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term “instant message name” with “Internet identifier.” The bill defines the term “Internet identifier” as “all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).” The bill specifies that an offender’s voluntary disclosure of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption for such personal information. As a result, sexual predators and offenders will be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term “instant message name” with the term “Internet identifier” in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.<sup>14</sup>

### **Search of Registration Information**

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>15</sup> to conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

#### *Effect of the Bill*

The bill amends s. 943.04351, F.S., to require states agencies and governmental subdivisions to also search the person’s name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

### **Removal of the Requirement to Register as a Sexual Offender**

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender’s life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>16</sup> However, there are ways in which the registration requirement can be removed.

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<sup>12</sup> See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

<sup>13</sup> FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

<sup>14</sup> Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

<sup>15</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

<sup>16</sup> Sections 775.21(6) and 943.0435(11), F.S.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.<sup>17</sup>

*Effect of the Bill*

The bill amends s. 943.0435(11)(a), F.S., to expand the instances in which specified sexual offenders can petition the court to have the registration requirement removed. These changes bring the statute in line with the federal Adam Walsh Act.

1. Sexual offenders may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 25 years have elapsed since the offender's registration period for the most recent conviction requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - The offender's requirement to register was not based upon an adult conviction:
    - For a violation of ss. 787.01, F.S.;
    - For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
    - For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
    - For a violation of s. 800.04(5)(b), F.S.;
    - For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
    - For any attempt or conspiracy to commit any of the above-described offenses; or
    - For a violation of similar law of another jurisdiction.
  - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.

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<sup>17</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

2. Sexual offenders whose requirement to register was based upon an adult conviction for a violation of ss. 787.02 or 827.071(5), F.S., for any attempt or conspiracy to commit such offenses, or for a violation of a similar law in another jurisdiction, may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 15 years have elapsed since the offender's registration period for the most recent conviction requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 10 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
  
3. Sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S. (specified juvenile sexual offenders), may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 25 years have elapsed since the offender's registration period for the most recent adjudication requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register.

The bill specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register. Additionally, an offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program.

The bill also requires FDLE to be given notice of the petition at least 3 weeks prior to the hearing on the matter (currently only the state attorney is required to be given notice), and requires the court to instruct the petitioner to provide FDLE with a certified copy of the order granting relief.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.04354, F.S.

#### Section 943.04354, F.S.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and
3. Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

Subsection (2) of the statute provides that if a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or predator.<sup>18</sup> At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.<sup>19</sup>

Subsection (3) of the statute specifies that a person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or predator.<sup>20</sup> The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.<sup>21</sup>

#### *Effect of the Bill*

The bill makes a variety of changes to s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was convicted, regardless of adjudication, or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction, and the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction;
2. (a) Was required to register as a sexual offender or predator solely on the basis of the conviction or adjudication described in 1.; or  
(b) Was convicted, regardless of adjudication, or adjudicated delinquent of an offense in another jurisdiction that is similar to an offense listed in 1. and no longer meets the criteria for registration as a sexual offender under the laws of the jurisdiction where the similar offense occurred; and
3. Is not more than 4 years older than the victim of this violation who was 13 years of age or older but less than 18 years of age at the time the person committed this violation.

The bill amends s. 943.04354(2), F.S., to:

- Specify that the motion must be filed in the *sentencing* court, or for persons convicted or adjudicated delinquent in another jurisdiction, the criminal circuit court of the circuit in which the petitioner resides.
- Require persons convicted or adjudicated delinquent of an offense in another jurisdiction to provide the court written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.

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<sup>18</sup> The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

<sup>19</sup> If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

<sup>20</sup> The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

<sup>21</sup> If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.



- Require that FDLE be given notice of the motion at least 3 weeks prior to the date of sentencing, disposition of the violation, or hearing on the motion (currently only the state attorney is required to be given notice).
- Require the court to instruct the moving party to provide FDLE with a certified copy of the order granting relief.

The bill also amends s. 943.04354(2), F.S., to remove the language requiring that the offense be committed on or after July 1, 2007, and repeals s. 943.04354(3), F.S. As a result, the registration removal provisions of s. 943.04354, F.S., will apply to all eligible sexual offenders, regardless of their offense date.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.04354, F.S.

### **Definition of Risk Assessment**

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

Section 947.005, F.S., currently defines the term “risk assessment” as “an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.”

In 2010, the definition of the term “risk assessment” in s. 948.001, F.S. (relating to probation), was amended to remove the requirement that the assessment be completed by *an independent* qualified practitioner.<sup>22</sup> However, this change was not made to the definition contained in s. 947.005, F.S.

#### *Effect of the Bill*

The bill amends the definition of the term “risk assessment” in s. 947.005, F.S., to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

### **Conditions of Supervision – Sex Offender Treatment**

Since 1995, there has been a condition of probation requiring sexual offenders convicted of specified offenses to successfully complete sexual offender treatment.<sup>23</sup> Currently, this condition of probation, found in s. 948.30(1)(c), F.S., is a standard condition of probation and only applies to probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for violations of ch. 794, F.S., s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S.

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.<sup>24</sup> This section of statute applies to all sexual offenders on probation – not just those convicted of specified offenses.

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<sup>22</sup> Chapter 2010-92, L.O.F.

<sup>23</sup> Chapter 1995-283, L.O.F.

<sup>24</sup> Section 948.30, F.S., currently contains standard conditions of probation that require sex offender treatment for certain offenders and that prohibit certain sex offenders from having contact with minors if the victim of the offender’s offense was under 18. The bill requires courts to impose a restriction against contact with minors regardless of whether the offender’s victim was a minor.

### *Effect of the Bill*

The bill amends s. 948.31, F.S., to authorize (rather than mandate) a court to require probationers who are required to register as a sexual offender to undergo an evaluation by a qualified practitioner to determine whether the offender needs sex offender treatment. If the practitioner recommends treatment, the offender must successfully complete and pay for such treatment, which must be provided by a qualified practitioner.

The bill also amends s. 948.31, F.S., to remove the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended. This prohibition is not needed in s. 948.31, F.S., as there is already a standard condition of supervision in s. 948.30(1)(e), F.S., prohibiting specified sexual offenders from having contact with minors.

### **Exposure of Sexual Organs**

Section 800.03, F.S., makes it a first degree misdemeanor<sup>25</sup> for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

### *Effect of the Bill*

The bill makes third or subsequent violations of s. 800.03, F.S., third degree felonies.<sup>26</sup>

### **Bail Determinations**

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.<sup>27</sup> Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.<sup>28</sup>

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.<sup>29</sup>
- The nature and probability of danger which the defendant's release poses to the community.

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<sup>25</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>26</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

<sup>28</sup> *Id.*

<sup>29</sup> Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.<sup>30</sup>
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,<sup>31</sup> or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.<sup>32</sup>

#### *Effect of the Bill*

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,<sup>33</sup> is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance<sup>34</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.

#### **Electronic Monitoring – Conditional Release**

Section 947.1405, F.S., requires certain repeat offenders convicted of specified offenses to be released under supervision subject to specified terms and conditions, which are set by the Florida Parole Commission (Commission). This type of supervision is called “conditional release.” Currently, the statute requires the Commission to impose certain conditions of supervision on conditional releasees convicted of specified sexual offenses (e.g., a curfew, a prohibition on living within 1,000 feet of certain locations, etc.).

Section 947.1405(10), F.S., currently requires the Commission to impose electronic monitoring (EM) as a condition of supervision for a conditional releasee whose crime was committed on or after September 1, 2005, and who:

- Was convicted of a violation of ch. 794, F.S.; ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.; and the unlawful activity involved a victim who was 15 years of age or younger and the offender was 18 years of age or older; or
- Is designated as a sexual predator pursuant to s. 775.21, F.S.

#### *Effect of the Bill*

The bill requires the Commission to impose EM as a condition of supervision for a conditional releasee whose crime was committed on or after July 1, 2012, and who has been convicted of a violation of s.

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<sup>30</sup> Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

<sup>31</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

<sup>32</sup> Section 903.046, F.S.

<sup>33</sup> Chapter 316, F.S., is the State Uniform Traffic Control chapter.

<sup>34</sup> See Rule 3.130, Fla. R. Crim. Proc.

800.04(7)(b), F.S. (lewd or lascivious exhibition by an offender 18 or older), s. 847.0135, F.S. (computer pornography, traveling to meet a minor), or a similar offense in another jurisdiction.

### **Electronic Monitoring - Probation**

Probation is a form of community supervision requiring specified contacts with parole and probation officers and compliance with court-ordered conditions of supervision.<sup>35</sup> When someone is sentenced to probation, the court determines the terms and conditions of their supervision.<sup>36</sup>

Section 948.30, F.S., sets forth standard conditions of supervision that a court must impose on offenders convicted of certain sexual offenses. Subsection (3) of the statute requires the court to impose EM on offenders whose crime was committed on or after September 1, 2005, and who:

- Is placed on probation or community control for a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.;
- Is designated a sexual predator pursuant to s. 775.21, F.S.; or
- Has previously been convicted of a violation of ch. 794, F.S.; ss. 800.04(4), (5), or (6); 827.071; 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.<sup>37</sup>

#### *Effect of the Bill*

The bill requires courts to impose EM on an offender whose crime was committed on or after July 1, 2012, and who:

- Is placed on probation or community control for a violation of ss. 800.04(7)(b) or 847.0135, F.S.; or
- Has previously been convicted of a violation of ss. 800.04(7)(b) or 847.0135, F.S., or a similar offense in another jurisdiction.

### **The Criminal Punishment Code - Offense Severity Ranking Chart**

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.<sup>38</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.<sup>39</sup> A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

A violation of s. 796.03, F.S. (procuring person under age of 18 for prostitution), is currently ranked in Level 7 of the ranking chart but is incorrectly described in the chart as "procuring any person under 16 years for prostitution."<sup>40</sup> Similarly, a violation of s. 787.02(3)(a), F.S. (false imprisonment of a child under 13 while committing other specified offenses), is currently ranked in Level 9 of the ranking chart, but is incorrectly listed as a 1<sup>st</sup> degree felony (the offense is a 1<sup>st</sup> degree felony punishable for life imprisonment).

#### *Effect of the Bill*

The bill amends the ranking chart to correct the above-described inaccuracies.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

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<sup>35</sup> Section 948.001(8), F.S.

<sup>36</sup> Section 948.03, F.S.

<sup>37</sup> Section 948.30(3), F.S.

<sup>38</sup> Section 921.002, F.S.

<sup>39</sup> Section 921.0022, F.S.

<sup>40</sup> Section 921.0022(3)(g), F.S.

Section 2. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 3. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 6. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 7. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 8. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 9. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 10. Amends s. 947.005, F.S., relating to definitions.

Section 11. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 12. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 13. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 14. Amends s. 947.1405, F.S., relating to conditional release program.

Section 15. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 16. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 17. Provides an appropriation to the Department of Corrections.

Section 18. The bill is effective October 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

On January 30, 2012, the Criminal Justice Impact Conference determined that HB 7047, which is substantially similar to this bill, would have an insignificant prison bed impact.

The bill requires the court to impose electronic monitoring on additional offenders. This will have a negative fiscal impact on the Department of Corrections. The department has estimated a recurring cost of \$112,420 in FY 2012-13, \$204,765 in FY 2013-14, and \$295,103 in FY 2014-15 in order to implement the requirements of this bill.<sup>41</sup> The department's annual appropriation for electronic monitoring is \$6.2 million. The number of offenders on electronic monitoring has increased and the department is projecting a current year deficit of \$1.3 million. The department has amended the contract for electronic monitoring and reduced the cost, however the population of offenders sentenced with electronic monitoring continues to increase.<sup>42</sup> The bill provides the department with \$112,420 in recurring general revenue in order absorb the impact of the new requirements of the bill.

This bill would require the Department of Juvenile Justice to update their Juvenile Justice Information System. The current system does not capture and store every aspect this bill requires. The department has estimated a \$17,600 nonrecurring cost which can be absorbed within existing resources.<sup>43</sup> Also, the department can request federal funding through the State Advisory Group to implement the required changes.<sup>44</sup>

The Florida Department of Law Enforcement has stated that the proposed legislation will have an estimated fiscal impact of \$57,050 in non-recurring expenditures and can be handled within existing resources.<sup>45</sup>

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

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

In January, 2012, there were 48,700 registered sexual offenders and 9,289 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will be insignificant.

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

None.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not applicable because the bill:

- Does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

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<sup>41</sup> Department of Corrections, HB 455 Criminal Offenders Analysis, December 2, 2012.

<sup>42</sup> E-mail from Tommy Maggitas, Department of Corrections, Legislative Affairs, February 7, 2012.

<sup>43</sup> Department of Juvenile Justice, 2012 Legislative Session Bill Analysis, HB 455, November 4, 2011.

<sup>44</sup> E-mail from Vickie Harris, Budget Director, Department of Juvenile Justice, February 6, 2012, on file with Justice Appropriations Staff.

<sup>45</sup> Florida Department of Law Enforcement, 2012 Legislative Session Bill Analysis, HB 455 Relating to Criminal Offenders, February 2, 2012.

- to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- Is a criminal law.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Adds crimes to the list of offenses that qualify a person as a sexual offender and sexual predator.
- Requires sexual predators and offenders to provide additional information during the registration process.
- Expands that instances in which a sexual offender can petition the court to be removed from the requirement to register.
- Increases the penalty for third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs), from a first degree misdemeanor to a third degree felony.
- Makes technical corrections to the Criminal Punishment Code; offense severity ranking chart.

On February 15, 2012, the Appropriations Committee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment provides \$112,420 of recurring general revenue to the Department of Corrections to provide electronic monitoring as required by the bill.

On February 22, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a variety of technical changes, recommended by the Florida Department of Law Enforcement, to the provisions requiring sexual predators and sexual offenders to provide registration information.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.