

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB CRJS 13-02 Sex Offenses

SPONSOR(S): Criminal Justice Subcommittee, Harrell

TIED BILLS: **IDEN./SIM. BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	9 Y, 2 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill 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); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also:

- Broadens a hearsay exception for child victims of abuse and sexual abuse;
- Requires sexual predators and offenders to provide the sheriff and the Florida Department of Law Enforcement (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 maintained by the United States Department of Justice;
- 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;
- Requires sexual offenders who are arrested for an offense (other than a misdemeanor offense 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; and
- Makes technical corrections to the Criminal Punishment Code; offense severity ranking chart.

The Criminal Justice Impact Conference met on March 21, 2013 and determined that this bill will have an insignificant impact on state prison beds. The bill will have a fiscal impact on FDLE which can be absorbed in existing resources. The bill may also have a jail bed impact. See fiscal section.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hearsay Evidence (Section 1)

Section 90.803, F.S., contains a variety of hearsay exceptions. Subsection (23) of the statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing certain sex crimes¹ is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;² and
- The child either:
 - Testifies; or
 - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability includes a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.³

Effect of the Bill

The bill amends s. 90.803(23), F.S., by increasing the age of a child to which the hearsay exception applies from 11 to 16.

Sexual Predator Qualifying Offenses (Section 2)

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

¹ These crimes include child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child. Section 90.803(23)(a), F.S.

² In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate. Section 90.803(23)(a)1., F.S.

³ Section 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

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 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking)
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.⁴
 - 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 810.145(8)(b), F.S. (relating to video voyeurism)
 - 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); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also changes the reference to s. 847.0135(5), F.S., in the above list to "s. 847.0135, F.S., excluding s. 847.0135(6), F.S." As a result, all of the computer-related sexual offenses in s. 847.0135, F.S., are qualifying offenses, except for subsection (6), which prohibits an owner or operator of a computer online service to knowingly permit a subscriber to use the service to commit a violation of the statute.

Sexual Offender Qualifying Offenses (Sections 5, 9 and 10)

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 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking)
 - 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 810.145(8), F.S. (relating to video voyeurism)
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)

⁴ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

- 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 sanction⁵ 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); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

Sexual Predator and Sexual Offender Registration (Sections 2, 5, 9, 10, 13 and 14)

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.⁶ A sexual predator or sexual offender must comply with a number of statutory registration requirements.⁷ Failure to comply with these requirements is generally a third degree felony.⁸

Sexual predators and offenders must register at the sheriff’s office within 48 hours of establishing or maintaining a residence.⁹ 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, who then provides the information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.¹⁰

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.¹¹ 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.¹² 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.¹³

⁵ 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.

⁶ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

⁷ *Id.*

⁸ Sections 775.21(10) and 943.0435(14), F.S. 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.

⁹ 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.

¹⁰ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

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.
- Provides that an offender who knowingly provides false registration information by act or omission commits a third degree felony (this provision is also added to ss. 944.607 and 985.4815, F.S.).

Sexual Predator / Offender Registration - Instant Message Name (Sections 2, 5, 8, 9, and 10)

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.¹⁴ Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹⁵

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.

¹⁴ See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹⁵ 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.

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.¹⁶

Search of Registration Information (Section 6)

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,¹⁷ 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 (Sections 5 and 7)

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.¹⁸ However, there are ways in which the registration requirement can be removed.

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.¹⁹

Effect of the Bill

The bill amends s. 943.0435(11)(a), F.S., to modify and 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:

¹⁶ 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.

¹⁷ These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

¹⁸ Sections 775.21(6) and 943.0435(11), F.S.

¹⁹ 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.

- 25 years have elapsed since the offender's registration period for the most recent conviction requiring registration began, excluding any period in which the offender was supervised by DOC;
 - 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 s. 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 the use of force or coercion and unclothed genitals or genital area;
 - For any attempt or conspiracy to commit any of the above-described offenses;
 - For a violation of similar law of another jurisdiction; or
 - For a violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed above.
 - 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.
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, excluding any period in which the offender was supervised by DOC;
 - 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, excluding any period in which the offender was supervised by the Department of Juvenile Justice;
 - 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. 943.0435, 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.²⁰ 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.²¹

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.²² 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.²³

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

²⁰ 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.

²¹ 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.

²² 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.

²³ 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.

- 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.
- 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 11)

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.²⁴ 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 (Section 12)

Since 1995, there has been a condition of probation requiring sexual offenders convicted of specified offenses to successfully complete sexual offender treatment.²⁵ Currently, this condition of probation,

²⁴ Chapter 2010-92, L.O.F.

²⁵ Chapter 1995-283, L.O.F.

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 violation 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.²⁶ This section of statute applies to all sexual offenders on probation – not just those convicted of specified offenses.

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 3)

Section 800.03, F.S., makes it a first degree misdemeanor²⁷ 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.

Bail Determinations (Section 4)

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.²⁸ 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.²⁹

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.

²⁶ 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.

²⁷ 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.

²⁸ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

²⁹ *Id.*

- 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.³⁰
- The nature and probability of danger which the defendant's release poses to the community.
- 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.³¹
- 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.,³² 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.³³

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.,³⁴ 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 appearance³⁵ on the case in order to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Punishment Code - Offense Severity Ranking Chart (Section 15)

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.³⁶ 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.³⁷ A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

³⁰ 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.

³¹ 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.

³² Chapter 874, F.S., relates to criminal gang enforcement and prevention.

³³ Section 903.046, F.S.

³⁴ Chapter 316, F.S., is the State Uniform Traffic Control chapter.

³⁵ See Rule 3.130, Fla. R. Crim. Proc.

³⁶ Section 921.002, F.S.

³⁷ Section 921.0022, F.S.

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.”³⁸ 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 first degree felony (the offense is a first 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. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.

Section 2. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 3. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 4. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 5. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 6. 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 7. 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 8. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 9. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 10. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 11. Amends s. 947.005, F.S., relating to definitions.

Section 12. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 13. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 14. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 15. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 16. The bill is effective October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³⁸ Section 921.0022(3)(g), F.S.
STORAGE NAME: h7031a.JUAS
DATE: 3/28/2013

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013 and determined that this bill may have an insignificant impact on state prison beds.

The possible prison bed impact on the Department of Corrections is that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. However, failure to register is generally punishable as an unranked third degree felony, so the impact to state prison beds may be insignificant. Also, the bill makes third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs) a third degree felony (rather than a misdemeanor).

FDLE's estimated fiscal impact is \$66,425 in non-recurring expenditures to complete programming and testing necessary to implement the qualifying offense and registration provisions of the bill. The \$66,425 fiscal impact will be handled within the department's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

In February 2013, there were 50,636 registered sexual offenders and 9,903 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 or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely 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 to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- Is a criminal law.

2. 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 February 19, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the PCB favorably. The first amendment corrected a statute citation in s. 775.21(4)(a)1., F.S. The second amendment made a variety of technical changes to statute cites and amended the sexual offender reregistration statutes to ensure that persons convicted of a sexual offense that was later renumbered are required to register as a sexual offender.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.