

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1105 Sexual Predator and Sexual Offender Absconders

**SPONSOR(S):** Criminal Justice Subcommittee; Adkins

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1416

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

### SUMMARY ANALYSIS

The Department of Corrections (DOC) supervises offenders sentenced to supervision in circuit court. When an offender absconds from DOC's supervision, it is a violation of the terms and conditions of supervision, and results in a warrant being issued for the offender's arrest.

When a registered sexual predator or sexual offender absconds from supervision, DOC's local probation office notifies local law enforcement agencies that the offender has absconded, and provides them with the warrant and the offender's last known address. DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision. In addition to these efforts:

- DOC's Absconder Unit assists local probation offices in locating absconders and maintains a website that provides photographs of absconders and a tip line to call or email with information;
- The Florida Department of Law Enforcement (FDLE) shares information with local law enforcement agencies in an effort to ensure that sexual offenders who abscond from registration are located; and
- The United States Marshal's Office's Sex Offender Investigations Branch assists state, local, tribal and territorial authorities in locating and apprehending non-compliant and fugitive sex offenders.

The bill creates the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within the FDLE, whose purpose is to develop and prioritize coordinated strategies for the apprehension of registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision. The Strike Force consists of the following 10 members or their designees:

- The executive director of FDLE (chair); the Secretary of DOC (vice chair); the Secretary of Children and Families; the chair of the Parole Commission; the executive director of the Department of Highway Safety and Motor Vehicles; and five members appointed by the executive director of the Department of Law Enforcement, consisting of two sheriffs, two chiefs of police, and one state attorney.

The Strike Force must meet at least four times a year and has three duties. It must:

- Develop and review a statewide list of known sexual predators and sexual offender absconders;
- Prioritize those absconders that pose the greatest risk to public safety by evaluating their criminal history, most recent dates of offense, length of time as an absconder and other factors and disseminate such list to local law enforcement agencies; and
- Develop and recommend coordinated state-wide strategies for the apprehension of sexual predators and sexual offender absconders with special focus on those that pose the greatest risk to public safety.

The Strike Force must annually submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill will require the FDLE to administer the strike force which will require one FTE, travel and per diem expenses of approximately \$101,418. This bill provides and appropriation of \$101,418 for that purpose.

The bill is effective July 1, 2014.

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

**STORAGE NAME:** h1105b.JUAS

**DATE:** 4/2/2014

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Probation, Community Control, and Conditional Release**

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.<sup>1</sup> Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by probation officers with restricted caseloads.<sup>2</sup> Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.<sup>3</sup>

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.<sup>4</sup> Similarly, the Commission is required to impose the conditions of supervision found in s. 947.1405, F.S., on conditional releasees.<sup>5</sup> The standard conditions of probation include provisions that require all offenders to:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere; and
- Remain within a specified place.<sup>6</sup>

The Department of Corrections (DOC) supervises all probationers, community controllees, and conditional releasees sentenced in circuit court.<sup>7</sup>

#### **Violations of Probation, Community Control, and Conditional Release**

Section 948.06, F.S., establishes the procedures that must be used when an offender violates the terms and conditions of his or her supervision. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the offender admits the charge, the court may immediately revoke, modify, or continue supervision, or place the offender into a community control program.<sup>8</sup>

If the offender denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.<sup>9</sup> Unless dismissed, the court must conduct a hearing and determine whether the offender has knowingly and willfully violated the terms of his or her probation.<sup>10</sup> If the court finds that

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<sup>1</sup> Section 948.001(8), F.S.

<sup>2</sup> Section 948.001(3), F.S.

<sup>3</sup> Section 947.1405, F.S., requires conditional release for an inmate who:

- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

<sup>4</sup> Sections 948.001(8) and 948.03, F.S. These conditions require offenders to comply with a variety of requirements (e.g., report to probation supervisors as directed, permit probation supervisors to visit at home or elsewhere, work faithfully at suitable employment, make restitution, not associate with persons engaged in criminal activities, etc.).

<sup>5</sup> Section 947.1405(2), F.S.

<sup>6</sup> Section 948.03(1)(a), (b), and (d), F.S. In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper. Sections 948.03(2) and 947.1405(6), F.S.

<sup>7</sup> Sections 948.01(1) and 947.1405, F.S.

<sup>8</sup> Section 948.06(2), F.S.

<sup>9</sup> Section 948.06(2)(c), F.S.

<sup>10</sup> Section 948.06(2)(d), F.S.

the offender has violated, the court may immediately revoke, modify, or continue the supervision, or place the offender into a community control program.<sup>11</sup>

If supervision is revoked, the court must adjudicate the offender guilty of the offense charged and proven or admitted. The court may then impose any sentence that it might have originally imposed for the offense for which the offender was placed on supervision.

### **Absconders**

Occasionally, offenders abscond from DOC's supervision (i.e., they make themselves unavailable for supervision and all efforts to locate the offender have been exhausted).<sup>12</sup> Absconding is a violation of the terms and conditions of supervision, and subjects the offender to the above-described violation process. However, because the offender's location is unknown, he or she cannot be arrested and brought before the sentencing court. Instead, a judge issues a warrant for the offender's arrest.<sup>13</sup>

When a registered sexual predator or sexual offender<sup>14</sup> absconds from supervision, DOC's local probation office and officers notify local law enforcement agencies that the offender has absconded, and provide them with the warrant and the offender's last known address.<sup>15</sup> DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision.<sup>16</sup>

In addition to the local efforts to track down absconders, DOC created an Absconder Unit 13 years ago.<sup>17</sup> Stationed at DOC's Central Office in Tallahassee, the Absconder Unit assists local probation offices in locating high profile absconders.<sup>18</sup> The Absconder Unit maintains a link on DOC's public website<sup>19</sup> that provides photographs of absconders and a tip line to call or email with information. The Absconder Unit investigates tips and coordinates arrests with local law enforcement. The Absconder Unit also uses people search software and other resources to locate absconders or confirm their death.<sup>20</sup>

The Florida Department of Law Enforcement (FDLE) also assists in the apprehension of sexual predators and sexual offenders who abscond. Section 943.043(5), F.S., requires FDLE to share information with local law enforcement agencies in an effort to ensure that sexual predators and sexual offenders who fail to respond to address-verification attempts or who otherwise abscond from registration are located in a timely manner. FDLE must review and analyze all available information concerning any such predator or offender and provide the information to local law enforcement agencies in order to assist the agencies in locating and apprehending the offender.<sup>21</sup>

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<sup>11</sup> Section 948.06(2)(e), F.S.

<sup>12</sup> E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

<sup>13</sup> Section 948.06(1), F.S. Additionally, whenever there are reasonable grounds to believe that an offender has violated his or her supervision, any law enforcement officer who is aware of the supervision status of the offender or any parole or probation supervisor may arrest the offender without warrant and return him or her to the court granting such supervision.

<sup>14</sup> Sections 775.21 and 943.0435, F.S., set forth the criteria for determining whether a person is a "sexual predator" or a "sexual offender." Sexual predators and sexual offenders must comply with a number of statutory registration requirements. Whether a person has to register depends on their offense date (sexual predators) or the date on which the offender was released from the sanction imposed (sexual offenders).

<sup>15</sup> E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

<sup>16</sup> *Id.* Also see, E-mail from Amy Mercer, Executive Director of the Florida Police Chiefs Association, dated March 7, 2014; E-mail from Sarrah Carroll, Assistant Executive Director of Operations of the Florida Sheriffs Association, dated March 7, 2014 (all on file with the Criminal Justice Subcommittee).

<sup>17</sup> E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

<sup>18</sup> *Id.*

<sup>19</sup> The web address for this site is <http://www.dc.state.fl.us/wanted.html> (last visited on March 11, 2014).

<sup>20</sup> *Id.*

<sup>21</sup> Section 943.043(5), F.S.

On the federal level, the United States Marshal's Office created the Sex Offender Investigations Branch (SOIB) following the passage of the Adam Walsh Child Protection and Safety Act (AWA) in 2006.<sup>22</sup> The SOIB:

- Assists state, local, tribal and territorial authorities in the location and apprehension of non-compliant and fugitive sex offenders;
- Investigates violations of the AWA for federal prosecution; and
- Assists in the identification and location of sex offenders relocated as a result of a major disaster.<sup>23</sup>

There are currently 7,906 sexual predators and sexual offenders under DOC's supervision who are required to register.<sup>24</sup> Of this pool, there are currently 379 absconders.<sup>25</sup>

The number of sex offender absconders (who are required to register) has been reduced over the past eight years from 419 in 2007, to 379 in 2014.<sup>26</sup>

### **Effect of the Bill**

The bill provides the following legislative finding:

- The Legislature finds that there is a need to locate and arrest registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision.

The bill creates s. 16.581, F.S., to establish the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within FDLE. The purpose of the Strike Force is to locate registered sexual predators<sup>27</sup> and sexual offenders<sup>28</sup> who are under DOC's supervision and who have absconded from such supervision.

The Strike Force must consist of the following 10 members or their designees:

- The executive director of the Department of Law Enforcement, who shall serve as chair;
- The Secretary of Corrections, who shall serve as vice chair;
- The Secretary of Children and Families;
- The chair of the Parole Commission;
- The executive director of the Department of Highway Safety and Motor Vehicles; and
- Five members appointed by the Attorney General, consisting of two sheriffs, two chiefs of police, and one state attorney.<sup>29</sup>

The five members appointed by the executive director of the Department of Law Enforcement must be appointed to 4-year terms.<sup>30</sup> Each of the remaining members is a standing member of the Strike Force and may not serve beyond the time he or she holds the position that was the basis for the membership.<sup>31</sup> Vacancies must be filled in the same manner as the original appointment, but only for the remainder of the term. Members of the Strike Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

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<sup>22</sup> <http://www.usmarshals.gov/investigations/index.html> (last visited in March 11, 2014).

<sup>23</sup> *Id.*

<sup>24</sup> E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Criminal Justice Subcommittee).

<sup>25</sup> *Id.* Out of the 379 absconder warrants, 157 were issued 10 or more years ago, while 114 were issued less than three years ago.

<sup>26</sup> *Id.*

<sup>27</sup> The bill defines "sexual predator" as a person required to register as a sexual predator under s. 775.21, F.S.

<sup>28</sup> The bill defines "sexual offender" as a person required to register as a sexual offender under ss. 943.0435 or 944.607, F.S.

<sup>29</sup> In making these appointments, the Attorney General must consider representation by geography, population, ethnicity, and other relevant factors in order to ensure that the membership of the Strike Force is representative of the state as a whole.

<sup>30</sup> For the purpose of providing staggered terms of the initial appointments, two members must be appointed to a 2-year term, two members must be appointed to a 3-year term, and one member must be appointed to a 4-year term.

<sup>31</sup> Membership on the Strike Force does not disqualify a member from holding any other public office or from being employed by a public entity, except that a member of the Legislature may not serve on the strike force.

FDLE must provide administrative and support services for the Strike Force, which must organize by December 31, 2014. Thereafter, the Strike Force must meet at least four times per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. Members may appear at meetings by electronic means, and a majority of the members constitutes a quorum.

The Strike Force has three duties. It must:

- Develop and review a statewide list of known sexual predators and sexual offender absconders;
- Prioritize those absconders that pose the greatest risk to public safety by evaluating their criminal history, most recent dates of offense, length of time as an absconder and other factors and disseminate such list to local law enforcement agencies; and
- Develop and recommend coordinated state-wide strategies for the apprehension of sexual predators and sexual offender absconders with special focus on those that pose the greatest risk to public safety.

By October 1, 2015, and annually thereafter, the Strike Force must submit a report on its activities and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 16.581, F.S., relating to Sexual Predator and Sexual Offender Absconder Strike Force.

Section 2. Provides and appropriation.

Section 3. Provides and effective date of July 1, 2014.

## 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:

The bill establishes the Sexual Predator and Sexual Offender Absconder Strike Force within FDLE. FDLE must provide administrative and support services for the Strike Force. This will require one FTE at approximately \$65,000 in salaries and benefits, and travel and per diem expenses for six traveling members of the Strike Force of approximately \$36,418, for a total cost of \$101,418. This bill provides and appropriation of \$101,418 for that purpose.

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

##### 1. Revenues:

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

##### 2. Expenditures:

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

#### 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.

##### **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 March 10, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute removed provisions of HB 1105 that amended ch. 394, F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On April 2, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment moves the strike force from OAG to FDLE. The amendment provides the purpose of the Strike Force is to develop and prioritize coordinated strategies for the apprehension of registered sexual predators and sexual offenders who are under the supervision of the Department of Corrections and who have absconded from such supervision. The amendment revises the Strike Force's duties. The amendment also provides an appropriation of \$101,418 in recurring general revenue funds.