

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1416

INTRODUCER: Senator Bean

SUBJECT: Sexual Predators and Offenders

DATE: April 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1416 creates the Sexual Predator and Sexual Offender Absconder Strike Force (Strike Force) within the Office of the Attorney General (OAG) whose purpose is to locate registered sexual predators and sexual offenders who are under the Department of Children and Families' (DCF) or the Department of Correction's (DOC) supervision and who have absconded from such supervision.

The Strike Force consists of 11 members or their designees. The Strike Force must meet at least four times a year and must coordinate with the Florida Department of Law Enforcement (FDLE), DOC, and local law enforcement agencies to arrest registered sexual predators and sexual offenders who are under DCF's or DOC's supervision and who have absconded from such supervision and create a statewide list of known absconders to provide to local law enforcement agencies.

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.

It revises the legislative intent language in s. 394.911, F.S., by stating that the Legislature further recognizes that registered sexual offenders placed under conditional release due to a mental health disorder require special programs of supervision and that such programs must be established or approved by the department.

The bill redefines the term "sexually violent offense" to include specified offenses involving a child under the age of 16 rather than 13 and the term "total confinement" to apply to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county.

The bill creates a provision to require persons convicted of a sexual offense to be placed on a conditional release plan that would allow the courts to review compliance. It also provides that a person who has a diagnosed mental illness, a traumatic brain injury, or an intellectual disability or who poses a danger to others and who is convicted of a sexual offense involving a minor under the age of 16 shall be placed under a court-ordered conditional release plan.

II. Present Situation:

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.¹ 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.² Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.

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 correction 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.

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.³ Similarly, the Commission is required to impose the conditions of supervision found in s. 947.1405, F.S., on conditional releasees.⁴ 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.⁵

The DOC supervises all probationers, community controllees, and conditional releasees sentenced in circuit court.⁶

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Sections 948.001(9) 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.).

⁴ Section 947.1405(2), F.S.

⁵ 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.

⁶ Sections 948.01(1) and 947.1405, F.S.

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.⁷

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.⁸ 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.⁹ If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the supervision, or place the offender into a community control program.¹⁰

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).¹¹ 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.¹²

When a registered sexual predator or sexual offender¹³ 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.¹⁴ The DOC, the Florida Police Chiefs Association, and the Florida Sheriffs Association all report that

⁷ Section 948.06(2), F.S.

⁸ Section 948.06(2)(c), F.S.

⁹ Section 948.06(2)(d), F.S.

¹⁰ Section 948.06(2)(e), F.S.

¹¹ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Senate Criminal Justice Committee).

¹² Section 948.06(1), F.S.

¹³ 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).

¹⁴ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Senate Criminal Justice Committee).

DOC and local law enforcement routinely work together to apprehend registered sex offenders who have absconded from supervision.¹⁵

In addition to the local efforts to track down absconders, DOC created an Absconder Unit 13 years ago.¹⁶ Stationed at DOC's Central Office in Tallahassee, the Absconder Unit assists local probation offices in locating high profile absconders. The Absconder Unit maintains a link on DOC's public website that provides photographs of absconders and a tip line to call or email with information.¹⁷ 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.¹⁸

The 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. The 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.¹⁹

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 2006.²⁰ 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.²¹

There are currently 7,906 sexual predators and sexual offenders under DOC's supervision who are required to register. Of this pool, there are currently 379 absconders.²²

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 2014.²³

¹⁵ *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 (on file with e Senate Criminal Justice Committee).

¹⁶ E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Senate Criminal Justice Committee).

¹⁷ The web address for this site is <http://www.dc.state.fl.us/wanted.html> (last visited on April 2, 2014).

¹⁸ *Id.*

¹⁹ Section 943.043(5), F.S.

²⁰ <http://www.usmarshals.gov/investigations/index.html> (last visited April 2, 2014).

²¹ *Id.*

²² E-mail from Peter F. Murray, DOC's Deputy Legislative Affairs Director, dated March 7, 2014 (on file with the Senate Criminal Justice Committee).

²³ *Id.*

III. Effect of Proposed Changes:

The bill creates s. 16.581, F.S., and makes the legislative finding that there is a need to locate and arrest registered sexual predators and sexual offenders who are under the supervision of the Department of Children and Families or the Department of Corrections.

The bill establishes the Sexual Predator and Sexual Offender Absconder Strike Force within the Office of the Attorney General. The purpose of the Strike Force is to locate registered sexual predators²⁴ and sexual offenders²⁵ who have absconded from supervision by or the custody of the Department of Children and Families or the Department of Corrections.

Membership

The Strike Force shall consist of the following 11 members of their designees:

- The Attorney General, who shall serve as chair;
- The executive director of the Department of Law Enforcement, who shall serve as vice chair;
- The Secretary of Children and Families;
- The Secretary of Corrections;
- 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.²⁶

The five members appointed by the Attorney General must be appointed to 4-year terms.²⁷ 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.²⁸ 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.

The OAG 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 Attorney General shall appoint a chief of staff who must have experience, education, and expertise in the fields of law, prosecution, and sexual predator or sexual offender cases.

²⁴ The bill defines “sexual predator” as a person required to register as a sexual predator under s. 775.21, F.S.

²⁵ The bill defines “sexual offender” as a person required to register as a sexual offender under ss. 943.0435 or 944.607, F.S.

²⁶ 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.

²⁷ 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.

²⁸ 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 that a member of the Legislature may not serve on the strike force.

Duties

The Strike Force has two duties. It must coordinate with FDLE, DOC, and local law enforcement agencies to:

- Arrest registered sexual predators and sexual offenders who are under DCF's or DOC's supervision and who have absconded from such supervision; and
- Create a statewide list of known absconders and to provide such list to local law enforcement agencies.

Reports

By October 1, 2015, and annually thereafter, the strike force shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Redesignation

The bill provides a directive to the Division of Law Revision and Information to redesignate part V of ch. 394, F.S., as "Treatment or Involuntary Commitment of Sexual Offenders and Predators."

Revision of Legislative Intent

The bill revises the legislative intent language in s. 394.911, F.S., by stating that the Legislature further recognizes that registered sexual offenders placed under conditional release due to a mental health disorder require special programs of supervision and that such programs must be established or approved by the department.

Definitions

The bill amends s. 394.912, F.S., by redefining the term "sexually violent offense" to include specified offenses involving a child under the age of 16 rather than 13. It redefines the term "total confinement" to apply to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county.

Sexual Offenders and Predators on Conditional Release

The bill creates s. 394.91355, F.S., to require persons convicted of a sexual offense to be placed on a conditional release plan that would allow the courts to review compliance. It provides that a person who has a diagnosed mental illness, a traumatic brain injury, or an intellectual disability or who poses a danger to others and who is convicted of a sexual offense involving a minor under the age of 16 shall be placed under a court-ordered conditional release plan. It states that a forensic mental health case manager is responsible for reviewing compliance and concerns regarding each client on his or her caseload with a treatment team and placement providers on a monthly basis.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill establishes the Sexual Predator and Sexual Offender Absconder Strike Force within OAG. OAG must provide administrative and support services for the Strike Force. This will have an indeterminate negative workload impact on OAG.

The Criminal justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation reviewed the bill and found that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.911 and 394.912.

This bill creates the following sections of the Florida Statutes: 16.581 and 394.91355.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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