

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 562

INTRODUCER: Senator Gibson

SUBJECT: Sexual Predators and Offenders

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Favorable
2.			TR	
3.			AP	

I. Summary:

SB 562 prohibits a person from knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, except for the sole purpose of driving to and from work, public service, or treatment. It provides for penalties.

The bill redefines “total confinement” as it relates to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county. It creates s. 921.2312, F.S., to require “risk assessment reports” for crimes committed on or after October 1, 2014, for defendants who have been found guilty or entered a plea of nolo contendere for any offense that requires registration as either a sexual offender or sexual predator. It requires that the case be referred to a qualified practitioner to assess the defendant by considering the statutory components of the sexual offender’s status, along with the basis for that opinion, as to the offender’s risk of committing another sexual offense.

The bill requires that as a condition of supervision for offenders committing certain offenses on or after October 1, 2014, a mandatory curfew from 7 p.m. to 7 a.m.

II. Present Situation:

Sexual Predator and Sexual Offender

The distinction between a sexual predator and a sexual offender is based on the offense of conviction, the date the offense occurred or when sanctions were completed, and whether the person has previously been convicted of a sexual offense. Sexual predator status can only be conferred for offenses committed on or after October 1, 1993. Sexual offender status applies only if the person was released from the sanction for the designated offense on or after October 1, 1997. The list of designated offenses is not identical for sexual offenders and sexual predators,

but commission of any of the following offenses would require registration as either a sexual offender or a sexual predator:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery under ch. 794.011, F.S. (except false accusation of another under s. 794.011(10), F.S.).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S.) (except traveling to meet a minor under s. 847.0135(4), F.S.).
- Transmission of child pornography by electronic device (s. 847.0137, F.S.).
- Transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ During initial registration, a sexual predator or sexual offender who is not in the custody of the Department of Corrections (DOC), the DJJ, or a local jail is required to provide certain information including "the permanent, temporary or transient residence, within the state or out of the state, including a rural route address and a post office box" to the sheriff's department within 48 hours of sentencing or of establishing a residence. The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.² The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.³

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established.

¹ The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.48, and 985.4815, F.S.

² Section 943.0435(2)(a), F.S.

³ Section 943.0435(3), F.S.

Temporary residence is defined as:

a place where the person abides, lodges, or resides for a period of five or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

Transient residence is defined as:

a place or county where a person lives, remains, or is located for a period of five or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent or temporary residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

The DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known, six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent or temporary address, if known, during the time of incarceration or residential commitment.

Section 947.1405, F.S., the conditional release statute, requires that certain inmates who are released prior to completion of the full term of their sentence of incarceration be maintained under close supervision during the duration of the term. Sexual predators and inmates who have committed certain sexual crimes are among those who are subject to conditional release supervision. The Parole Commission sets the length and terms of supervision and the conditional releasee is supervised by DOC correctional probation officers. Statutorily-mandated conditions include a prohibition against certain sexual offenders whose victim was under 18 years old from having contact with children unless approved by the commission. The commission also imposes a special condition that prohibits these offenders from loitering within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, restaurant with attached playground, amusement park, business establishment whose primary clients are children, or other place where children regularly congregate, and from working at or living within 1,000 feet of such places.

Community Supervision

Probation is a form of community supervision that requires specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court. Community control is a form of

intensive community supervision, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Probationers and community controllees who have committed certain sexual offenses are prohibited from residing within 1,000 feet of schools, day care centers, playgrounds, parks, or other places where children regularly congregate. There are also local city and county ordinances that impose additional residency restrictions, including wider exclusion zones and additional areas of exclusion. Such offenders who have victims under the age of 18 also have conditions restricting unsupervised contact with minors and restrictions from working or volunteering at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls. The employment condition restricts supervised sex offenders from working or volunteering at these places, but does not currently limit them from visiting for any other purpose.

Section 948.30(1)(a), F.S., provides a curfew from 10 p.m. to 6 a.m. as a standard sex offender condition of supervision for certain offenders with specific sex offenses.

Section 948.30(1)(e), F.S., restricts sex offenders who are on conditional release or in community supervision from having contact with children if their victim was less than 18 years old. Section 794.065, F.S., prohibits certain sex offenders who are not under supervision from residing within 1,000 feet of a school, child care center, park, or playground. Also, s. 775.21(10)(c), F.S., prohibits certain designated sexual predators who are not under supervision from working or volunteering at any business, school, child care center, park, playground, or other place where children regularly congregate.

Section 948.30(2)(a), F.S., requires that a court-ordered treatment program for a probationer or community controllee who committed a specified sexual offense must include participation in at least annual polygraph examinations. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, if available, and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove a violation of community supervision.

Section 948.31, F.S., provides that the court must require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, it must require outpatient counseling as a term or condition of community supervision for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child, or prostitution. The statute specifies that this counseling can be obtained from a community health center, a recognized social service agency providing mental health services, a private mental health professional, or through other professional counseling.

III. Effect of Proposed Changes:

The bill prohibits a person from knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, except for the sole purpose of driving to and from work, public service, or treatment.

The bill provides that a person who violates this provision commits a second degree misdemeanor. It provides that a person's driver's license will be suspended for one year if he or she knowingly authorizes or allows a motor vehicle, either owned by them or within their dominion or control, to be used by a sexual predator or sexual offender to commit a felony. The bill also provides that provisions relating to the disposition of traffic infractions, are not available to a person who is charged with the offense of knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person.

The bill redefines "total confinement" as it relates to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county. This will allow jails to be included in providing required information to DCF to review for offenders meeting criteria for civil commitment.

The bill creates s. 921.2312, F.S., to provide for "risk assessment reports" for crimes committed on or after October 1, 2014. It requires that a case be referred to a qualified practitioner when a defendant has been found guilty in a circuit court or has entered a plea of nolo contendere or guilty for an offense that would require registration as either a sexual offender or sexual predator. It requires that the qualified practitioner assess the defendant by considering the components specified in s. 948.30(1)(e)1., F.S., and submit a written report to the circuit court at a specified time before sentencing. The report must include the qualified practitioner's opinion, along with the basis for that opinion, as to the offender's risk of committing another sexual offense.

The bill amends s. 948.30, F.S., to require, as a condition of supervision for offenders committing certain offenses⁴ on or after October 1, 2014, a mandatory curfew from 7 p.m. to 7 a.m. It provides that the court may designate alternate hours if the offender's employment or public service precludes the specified time and the alternative is recommended by the DOC. It provides that the court may also limit the offender's whereabouts by requiring the offender to be at home if the offender is not at work, performing public service, or in treatment. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.

The bill makes conforming changes to s. 948.31, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ This section would apply to a probationer or community controllee whose crime was committed on or after October 1, 2014, who is placed on probation or community control for a violation of ch. 794, s. 800.04(4),(5), or (6), s. 827.071, or s. 847.0145, F.S., relating to unlawful sexual activity involving a victim 15 years of age or younger and was 18 years of age or older at the time of the offense; is required to registered as a sexual predator or sexual offender; or has previously been convicted of committing sex crimes relating to unlawful sexual activity involving a victim 15 years of age or younger and was 18 years of age or older at the time of the offense.

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:

Persons who knowingly allow a registered sexual predator or sexual offender to unlawfully operate a motor vehicle are subject to fines and penalties.

C. Government Sector Impact:

According to the Department of Highway Safety and Motor Vehicles, there will be an impact on technology support to implement the changes required by this bill of approximate \$8,800 for 220 hours of labor at \$40.00 an hour.

According to the Office of the State Courts Administrator, the creation of the new misdemeanor crime will impact judicial workload to the extent additional cases are filed. In addition, the requirement of a risk assessment report for certain sex offenders will add to judicial workload as the judge will have to do a separate sentencing hearing from the plea hearing or trial.

VI. Technical Deficiencies:

The redefining of “total confinement” to include referrals to DCF under the Civil Commitment Act from county jails cannot be accomplished. Only an “agency with jurisdiction” can refer an inmate and county jails are not currently within the statutory definition of “agency with jurisdiction.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 318.17, 394.912, 948.30, and 948.31.

This bill creates the following sections of the Florida Statutes: 316.87 and 921.2312.

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.
