

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1179 Criminal Offenders

**SPONSOR(S):** Criminal Justice Subcommittee; Raulerson and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

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. A sexual predator or sexual offender must comply with a number of statutory registration requirements.

Other types of offenders of special concern, including career offenders and felony offenders, are required to register in a similar manner as a sexual predator or offender.

Additionally, Florida law often enhances criminal penalties, sentences, or collateral consequences when offenders of special concern, such as the above-mentioned offenders, commit new criminal offenses.

The bill amends a variety of statutes related to the sexual predators and offenders and other offenders of special concern. Specifically, the bill:

- Adds the offense of “deriving support from the proceeds of prostitution” to the list of offenses that require a person to be designated as a sexual offender and comply with registration requirements;
- Authorizes the sheriff to impose fees on sexual predators, sexual offenders, career offenders, and felony offenders for registering with the entity in accordance with registration requirements;
- Provides for registration fee amounts and exemptions from the requirement to pay;
- Revises the definition of “sex offender probation” or “sex offender community control;”
- Expands the application of special conditions of probation imposed pursuant to s. 948.30, F.S., to a person that commits a specified qualifying offense if, at the time of the new qualifying offense, such person had previously been designated as a sexual predator or offender;
- Codifies the court’s authority to impose special conditions of supervision on an offender even if the offense does not statutorily require special conditions;
- Provides requirements for the imposition of such special conditions of supervision;
- Requires that probation officers supervising persons on special conditions of supervision related to sexual offenses may not exceed a case count of more than 30;
- Requires a sexual predator or offender who commits a new offense to be sentenced to a ten-year mandatory minimum term of imprisonment; and
- Provides for severability of the provisions of the act.

The bill will have a positive significant prison bed impact to the Department of Corrections (DOC), and a significant negative fiscal impact on DOC. Additionally, the bill will likely have a positive fiscal impact on local government revenues and may have an indeterminate negative jail bed impact on local governments. See “Fiscal Analysis and Economic Impact Statement,” *infra*.

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Predator and Sexual Offender Qualifying Offenses**

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

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

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;
  - Section 794.011, F.S. (sexual battery);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 847.0145, F.S. (selling or buying of minors); or
  
2. Any felony violation, or attempt thereof, of:
  - 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);
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 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;<sup>1</sup>
  - Section 787.06(3)(b),(d),(f),(g), or former (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);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 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 battery 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, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - 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).

###### *Sexual Offender Qualifying Offenses*

---

<sup>1</sup> *Id.*

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:
  - 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);
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 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 former (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);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 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);
  - 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 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>2</sup> imposed for any conviction of an offense described above.

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

*Deriving Support from the Proceeds from Prostitution*

Section 794.05, F.S., provides it is unlawful for any person with reasonable belief or knowing another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person’s prostitution.

A first offense is a second degree felony;<sup>3</sup> a second offense is a felony of the first degree;<sup>4</sup> and a third or subsequent offense is a first degree felony with a mandatory minimum term of imprisonment of ten years.

Deriving support from the proceeds of prostitution is not currently included on the list of offenses which require a person to be designated as a sexual offender or comply with registration requirements.

---

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

<sup>3</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>4</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

## **Sexual Predator and Sexual Offender Registration**

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>5</sup> A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>6</sup> Failure to comply with these requirements is generally a third degree felony.<sup>7</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>8</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including, in part, his or her name, address, e-mail address, home and cellular telephone number, and internet identifier, to the sheriff's department, which then provides the information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.<sup>9</sup> A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>10</sup>

### Effect of the Bill

The bill amends ss. 943.0435 and 944.606, F.S., to include s. 796.05, F.S., related to deriving support from the proceeds of prostitution, to the list of offenses that qualify a person to register as a sexual offender.

Thus, a person who commits the offense of deriving support from the proceeds of prostitution will be required to comply with the various registration requirements in accordance with ss. 943.0435 and 944.607, F.S.

## **Other Offender Statuses Requiring Registration**

### *Career Offenders*

Section 775.261, F.S., also known as the "Florida Career Offender Registration Act," (Career Offender Act) provides that a career offender<sup>11</sup> released on or after July 1, 2002, from a sanction imposed in Florida<sup>12</sup> must comply with a number of statutory registration requirements.<sup>13</sup> Various penalties are provided for failure to comply with registration requirements.<sup>14</sup>

A career offender must register at FDLE or the sheriff's office within two working days of establishing or maintaining a residence.<sup>15</sup> During initial registration, a career offender is required to provide certain information, including, in part, his or her name, address, social security number, age, height, and weight.<sup>16</sup>

The provisions of the Career Offender Act do not apply to any person who has been designated as a sexual predator or offender.<sup>17</sup> However, if a person is no longer required to register as a sexual

---

<sup>5</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> ss. 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. ss. 775.082 and 775.083, F.S.

<sup>8</sup> See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>9</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

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

<sup>11</sup> s. 775.261(2)(a), F.S. A "career offender" means a person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084, F.S., or as a prison releasee reoffender under s. 775.082(9), F.S.

<sup>12</sup> Section 775.261(3), F.S., provides a sanction imposed in Florida includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, private correctional facility, or local detention facility, and the career offender has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph; or a conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

<sup>13</sup> See generally s. 775.261(4), F.S.

<sup>14</sup> s. 775.261(4)(g) and (8), F.S.

<sup>15</sup> s. 775.261(3), F.S.

<sup>16</sup> s. 775.261(4)(a)1., F.S.

<sup>17</sup> s. 775.261(3)(b), F.S.

predator or offender, the person must register as a career offender if the person meets the statutory requirements for designation as a career offender.<sup>18</sup>

Additionally, a person subject to registration as a career offender is not subject to registration as a convicted felon.<sup>19</sup> However, if the person is no longer required to register as a career offender under s. 775.261, F.S., the person must register as a felony offender under s. 775.13, F.S., if such person meets the statutory requirements.

#### *Felony Offenders*

A person who is convicted<sup>20</sup> of a felony in Florida must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>21</sup> During initial registration, a convicted felon is required to provide certain information, including, in part, his or her name, aliases, address, occupation, and specified information related to the conviction.<sup>22</sup> If the conviction was found to have been committed for the purpose of promoting, etc., a criminal gang, the person must identify himself or herself as part of a gang.<sup>23</sup> Various penalties are provided for failure to comply with registration requirements.<sup>24</sup>

Additionally, a person convicted of a crime in any federal court, any other state court, or of any foreign state or country, which would be a felony if committed in Florida, must also register at the sheriff's office within 48 hours of establishing or maintaining a residence.

Specified felony offenders are not required to register in accordance with s. 775.13, F.S.<sup>25</sup>

#### *Registration Fees*

Currently, six sheriffs' offices reported that they require offenders to pay for registration or re-registration and the other 61 do not require payments.<sup>26</sup> For an initial registration, the costs ranged from \$30 to \$75 dollars and for re-registration, the costs ranged from \$10 to \$25 dollars.<sup>27</sup> Some agencies also reported a \$10 fee for simple information updates.<sup>28</sup> The Office of Program Policy Analysis and Government Accountability reports that sheriff's offices are generally open for registration five days per week and many sheriffs reported offering extended hours, including evenings and weekends.<sup>29</sup>

---

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

<sup>19</sup> s. 775.261(3)(c), F.S.

<sup>20</sup> Section 775.13(1), F.S., provides that "convicted" means, with respect to a person's felony offense, a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

<sup>21</sup> s. 775.13(2), F.S.

<sup>22</sup> *Id.*

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

<sup>24</sup> s. 775.13(5), F.S.

<sup>25</sup> Offenders that are exempt from registration requirements include a person who: 1. has had his or her civil rights restored; 2. has received a full pardon for the offense for which convicted; 3. has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than five years prior to such time for registration, unless the offender is a fugitive from justice on a felony charge or has been convicted of any offense since release from such incarceration or other sentence or supervision; 4. is a parolee or probationer under the supervision of the United States Parole Commission if the commission knows of and consents to the presence of the offender in Florida or is a probationer under the supervision of any federal probation officer in the state or who has been lawfully discharged from such parole or probation; 5. is a sexual predator and has registered as required under s. 775.21, F.S.; 6. is a sexual offender and has registered as required in s. 943.0435, F.S. or s. 944.607, F.S.; or 7. is a career offender who has registered as required in s. 775.261, F.S., or s. 944.609, F.S.

<sup>26</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA), *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures*, Report 15-16, December 2015, p. 6 <http://www.oppaga.state.fl.us/summary.aspx?reportnum=15-16> (last visited February 3, 2016).

<sup>27</sup> *Id.*

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

<sup>29</sup> *Id.*

Other states require a person to pay fees when he or she is registering in accordance with statutory requirements to register as a specified offender. Examples of states that impose such fees include Michigan,<sup>30</sup> Illinois,<sup>31</sup> and Georgia.<sup>32</sup>

Florida law does not currently impose fees on an offender to comply with his or her statutory requirement to register.

#### Effect of the Bill

The bill creates s. 775.32, F.S., to permit the sheriff of each county to charge registration fees for sexual predators, sexual offenders, career offenders, and convicted felons (specified offenders) for the initial registration, reregistration, and registration updates with that sheriff. The bill provides that annual fees during a registration year may not exceed:

- \$200 dollars per sexual predator;
- \$100 dollars per sexual offender;
- \$50 dollars per career offender; or
- \$25 dollars per felony offender.

If an individual is required to register for multiple categories, only the highest fee can be imposed. Additionally, the bill provides that if a person has registered with a sheriff during a registration year and subsequently relocates to a different county prior to the conclusion of the registration year, the above-mentioned annual maximum amounts apply to the sheriff of the county of relocation. The sheriff of the county of relocation must include any payments already made by the person during the registration year for purposes of determining when the applicable maximum has been met.

The bill provides the following definitions:

- “Career offender” means an offender that qualifies for registration under s. 775.261, F.S.;
- “Convicted felon” means an offender that qualifies for registration under s. 775.13, F.S.;
- “Sexual offender” means an offender who is designated as a sexual offender that qualifies for registration under s. 943.0435, F.S.;
- “Sexual predator” means an offender designated as a sexual predator that qualifies for registration under s. 775.21, F.S.; and
- “Registration year” means the 12-month period beginning on the first day of the offender’s birth month.

The bill provides that a sheriff may waive the registration or re-registration fee for when a person is indigent. Any waivers or alternative fee arrangements must be documented in the official registration records of the sheriff’s office and be provided to the person required to register. The payment of any non-waived, applicable registration or re-registration fees must be paid at the time the specified offender is present in the sheriff’s office to provide information in accordance with the requirement to register. The bill prohibits a sheriff from refusing to register or re-register a person that does not pay the applicable fees.

The bill provides that any funds retained by the sheriff as a result of imposing registration fees must be credited to a special fund of the sheriff’s office and used solely for law enforcement and criminal prosecution purposes. The bill further provides that such funds may not be used as a basis to reduce funding otherwise made available to the sheriff’s office.

---

<sup>30</sup> Sexual offenders are required to pay an annual \$50 dollar fee for registration. *Changes to Verification Requirements for Registered Sex Offenders*, [http://www.michigan.gov/msp/0,4643,7-123-1878\\_24961-324433--,00.html](http://www.michigan.gov/msp/0,4643,7-123-1878_24961-324433--,00.html) (last visited on January 31, 2016).

<sup>31</sup> Sexual offenders are required to pay an initial registration fee of \$100 to be paid the very first time a registrant registers and an annual registration fee of \$100 to be paid once each year. *Frequently asked questions, Illinois Sex Offender Information*, <http://www.isp.state.il.us/sor/faq.cfm> (last visited on January 31, 2016).

<sup>32</sup> Sexual offenders must pay an annual \$250.00 dollar registration fee which is deposited into the state general fund. Georgia Bureau of Investigation, *42-1-12 State sexual offender registry*, <https://gbi.georgia.gov/42-1-12-state-sexual-offender-registry> (last visited on January 31, 2016).

The bill provides that a person who knowingly fails to pay a registration fee commits a second degree misdemeanor.<sup>33</sup> However, a person cannot be subject to these criminal penalties unless a court has previously made a finding that the person has the ability to pay the registration fees and the person subsequently fails to pay.<sup>34</sup> This provision does not apply if the registration fee is waived for indigency.

## **Probation or Community Control (Supervision)**

### *Standard Conditions of Supervision*

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>35</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>36</sup> DOC supervises all probationers and community controllees.<sup>37</sup>

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controllees.<sup>38</sup>

### *Sex Offender Supervision*

In addition to the standard conditions of supervision described above, s. 948.30, F.S., requires the court to impose additional conditions of supervision for probationers and community controllees convicted of specified sexual offenses.

For probationers or community controllees placed on supervision for a violations of specified sexual offenses<sup>39</sup> whose crime was committed on or after October 1, 1995, the court must impose the following conditions in addition to all other standard and special conditions imposed:

- A mandatory curfew from 10 p.m. to 6 a.m.,<sup>40</sup>
- If the victim was under the age of 18, a prohibition on:
  - Living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court;<sup>41</sup>
  - Contact with a child under the age of 18, except as authorized in s. 948.30(1)(e), F.S.;<sup>42</sup> and
  - Working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to, schools, child care facilities, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls;<sup>43</sup>
- Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the probationer's or community controllee's own expense,<sup>44</sup>

---

<sup>33</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>34</sup> Article I, sections 9 and 11 of the Florida Constitution both prohibit a person for being imprisoned for debt. Additionally, the Florida Supreme Court held that a person who does not have the ability to pay cannot be jailed for failure to pay. *See Del Valle v. State*, 80 So. 3d 999 (Fla. 2011)(The court held that there was no finding by the Court that the probationer had the ability to pay before revoking probation and sentencing him to boot camp. The only time the State is justified in imprisoning a person for failure to pay financial obligations is when that person has the means to pay and is merely refusing, but it is improper if the person cannot pay through no fault of their own.)

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

<sup>36</sup> s. 948.001(3), F.S.

<sup>37</sup> s. 948.001(1), F.S.

<sup>38</sup> ss. 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>39</sup> s. 948.30(1), F.S. A specified sexual offense under this provision refers to a violation of ch. 794, F.S., ss. 800.04, 827.071, 847.0135(5), or 847.0145, F.S.

<sup>40</sup> Section 948.30(1)(a), F.S., further provides that the court may designate another 8-hour period if the offender's employment precludes the above specified time, and the alternative is recommended by DOC. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.

<sup>41</sup> s. 948.30(1)(b), F.S.

<sup>42</sup> s. 948.30(1)(e), F.S.

<sup>43</sup> s. 948.30(1)(f), F.S.

- A prohibition on any contact with the victim, except in specified circumstances;<sup>45</sup>
- A prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern;<sup>46, 47</sup>
- Submission of a specimen of blood or other approved biological specimen to FDLE to be registered with the DNA data bank;<sup>48</sup>
- Restitution to the victim, as ordered by the court under s. 775.089, F.S., for all necessary medical and related professional services relating to physical, psychiatric, and psychological care;<sup>49</sup> and
- Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.<sup>50</sup>

For probationers or community controllees placed on supervision for violations of specified sexual offenses<sup>51</sup> whose crime was committed on or after October 1, 1997, the court must impose the following conditions in addition to all other standard and above-mentioned special conditions imposed:

- As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms;<sup>52</sup>
- Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer;<sup>53</sup>
- A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.<sup>54</sup>
- If there was sexual contact, a submission to an HIV test with the results to be released to the victim or the victim's parent or guardian;<sup>55</sup> and
- Electronic monitoring when deemed necessary by the community control or probation officer and his or her supervisor and ordered by the court.<sup>56</sup>

However, mandatory electronic monitoring is required as a special condition of supervision for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who:

- Is placed on supervision for a violation of a specified sexual offense<sup>57</sup> and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;
- Is designated a sexual predator pursuant to s. 775.21, F.S.; or

---

<sup>44</sup> s. 948.30(1)(c), F.S.

<sup>45</sup> s. 948.30(1)(d), F.S.

<sup>46</sup> This prohibition is not applicable if viewing such materials is indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. s. 948.30(1)(g), F.S.

<sup>47</sup> Additionally, for probationers and community controllees whose crime is committed on or after July 1, 2005, there is a further a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services. s. 948.30(1)(h), F.S.

<sup>48</sup> s. 948.30(1)(i), F.S.

<sup>49</sup> s. 948.30(1)(j), F.S.

<sup>50</sup> s. 948.30(1)(k), F.S.

<sup>51</sup> s. 948.30(2), F.S. A specified sexual offense under this provision refers to a violation of ch. 794, and ss. 800.04, 827.071, 847.0135(5), or 847.0145, F.S.

<sup>52</sup> s. 948.30(2)(a), F.S. A polygraph examination must be conducted by a polygrapher who is a member of a national or state polygraph association and who is certified as a postconviction sex offender polygrapher, where available, and shall be paid for by the probationer or community controllee. The results of the polygraph examination must be provided to the probationer's or community controllee's probation officer and qualified practitioner and cannot be used as evidence in court to prove that a violation of community supervision has occurred.

<sup>53</sup> s. 948.30(2)(b), F.S.

<sup>54</sup> s. 948.30(2)(c), F.S.

<sup>55</sup> s. 948.30(2)(d), F.S. This test must be at the probationer's or community controllee's expense.

<sup>56</sup> s. 948.30(2)(e), F.S.

<sup>57</sup> A specified sexual offense under this provision refers to a violation of ch. 794, ss. 800.04(4), (5), or (6), 827.071, or 847.0145, F.S.



- Has previously been convicted of a violation of a specified sexual offense and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.<sup>58</sup>

Special conditions were also added to a probationer or community controllee that is subject to supervision for a crime (does not have to be a sexual offense) that was committed on or after May 26, 2010, if he or she has previously been convicted at *any time* of committing, or attempting, soliciting, or conspiring to commit, any of the qualifying offenses listed in s. 943.0435, F.S.,<sup>59</sup> that require a person to be designated as a sexual offender and such offense was committed against a victim under the age of 18 years.<sup>60</sup> If the offender meets these conditions, in addition to all other conditions imposed, the court must impose the following conditions:

- A prohibition on visiting schools, child care facilities, parks, and playgrounds, or other court-designated locations necessary to protect a victim, without prior approval from the offender's supervising officer;<sup>61</sup>
- Without prior approval from the court, a prohibition on:
  - Distributing candy or other items to children on Halloween;
  - Wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas;
  - Wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter;
  - Entertaining at children's parties; or
  - Wearing a clown costume.

Lastly, for probationers or community controlees placed on supervision for violations of specified sexual offenses<sup>62</sup> whose crime was committed on or after October 1, 2014, in addition to all other standard and above-mentioned special conditions, the court must impose a condition prohibiting the probationer or community controllee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program.<sup>63</sup>

Conditions of supervision that are proscribed by statute are referred to as "standard conditions of supervision."<sup>64</sup> In addition to these standard conditions of supervision, the court has broad discretion to add any special conditions of supervision that it deems proper provided the special conditions are rationally related to rehabilitation.<sup>65</sup> A probationer or community controllee must be adequately placed on notice of conduct that is both required and prohibited during the supervision period.<sup>66</sup> Standard

<sup>58</sup> s. 948.30(3), F.S. A specified sexual offense under this provision refers to a violation of ch. 794, ss. 800.04(4), (5), or (6), 827.071, or 847.0145, F.S.

<sup>59</sup> Or a similar offense in another jurisdiction. s. 948.30(4), F.S.

<sup>60</sup> The special conditions cannot be imposed if, on the qualifying prior offense necessary for the imposition of the special conditions, the: a. offender has received a pardon; b. conviction has been set aside in any postconviction proceeding; or c. offender has been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, F.S.

<sup>61</sup> This prohibition does not prevent the offender from visiting one of these specified locations for the sole purpose of attending a religious service as defined in s. 775.0861, F.S., or picking up or dropping off the offender's children or grandchildren at a child care facility or school. s. 948.30(4)(a), F.S.

<sup>62</sup> s. 948.30(5), F.S. A specified sexual offense under this provision refers to a violation of ch. 794, and ss. 800.04, 827.071, 847.0135(5), or 847.0145, F.S.

<sup>63</sup> Section 948.30(5), F.S., further states that visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

<sup>64</sup> *State v. Hart*, 668 So. 2d 589, 592 (Fla. 1996)(The Court held that for due process reasons and because the defendant must make a contemporaneous objection to probation conditions at the time of sentencing, the defendant must be adequately placed on notice of the conditions being imposed at the time of sentencing. Further, it held that general conditions of probation are those contained in the statutes, but that with respect to a special condition not statutorily authorized, the law requires that it be pronounced orally at sentencing before it can be included in the written probation order).

<sup>65</sup> ss. 948.03(2) and 947.1405(6), F.S. See also *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013)(the District Court held that it was proper to require the defendant to comply with sexual offender treatment as a special condition of probation for misdemeanor battery when the conviction resulted from inappropriately touching his daughter on the buttocks and breasts).

<sup>66</sup> *Lawson v. State*, 969 So. 2d 222, 230 (Fla. 2007)(The Court held that to satisfy due process and provide notice, the probationer must orally pronounce any special condition of probation not authorized by statute. However, the Court held that probation orders do not

conditions of supervision are required to be included in the supervision order, but need not be orally pronounced in court.<sup>67</sup> However, special conditions of supervision that are not specifically authorized by statute must be orally pronounced to provide the probationer or community controllee with adequate notice.<sup>68</sup>

It must be noted that s. 948.001(13), F.S., defines the terms “sex offender probation” or “sex offender community control” to mean:

a form of intensive supervision, with or without electronic monitoring, which emphasizes treatment and supervision of a sex offender in accordance with an individualized treatment plan administered by an officer who has a restricted caseload and specialized training. An officer who supervises an offender placed on sex offender probation or sex offender community control must meet as necessary with a treatment provider and polygraph examiner to develop and implement the supervision and treatment plan, if a treatment provider and polygraph examiner specially trained in the treatment and monitoring of sex offenders are reasonably available.<sup>69</sup>

While this definition does not contain a cross-reference for any particular statute, the definition includes the same special conditions that the court is required to impose pursuant to s. 948.30, F.S.

#### Effect of the Bill

The bill amends the definitions of “sex offender probation” and “sex offender community control” found in s. 948.001, F.S., to include a cross reference to s. 948.30, F.S.

Additionally, the bill amends s. 948.30, F.S., to expand the application of the above-mentioned special conditions of probation to a person that commits a qualifying offense<sup>70</sup> if, at the time of the new qualifying offense, such person had previously been designated as a sexual predator or offender. If such person is placed on supervision for the new qualifying offense, he or she must be ordered to comply with all the applicable above-mentioned special conditions. For this provision to apply, the new qualifying offense for which the person is being placed on supervision must have occurred on or after October 1, 2016.

Codifies the court’s authority to impose special conditions of supervision on an offender even if the offense does not statutorily require special conditions

The bill also codifies the court’s authority to impose the above-mentioned special conditions of supervision on an offender who is placed on supervision for an offense even if the offense does not statutorily require such special conditions. The bill provides that the imposition of special conditions may only occur if:

- A review of the record supports a finding that the offense had a sexual component or motivation;
- The court makes such finding; and
- The court orally pronounces all special conditions to which the offender must comply.

Lastly, the bill requires that probationers and community controllees that are subject to special conditions in accordance with s. 948.30, F.S., must be supervised by probation officers who have a

---

have to include every possible restriction so long as a reasonable person is put on notice of what conduct will subject him or her to revocation.) .

<sup>67</sup> *Lawson*, at 228 and *Hart*, at 592.

<sup>68</sup> *Id.*

<sup>69</sup> s. 948.001(13), F.S.

<sup>70</sup> A qualifying offense is an offense listed in ss. 775.21, 943.0435, or 944.606, F.S., designating a person as a sexual predator or offender and requiring registration, or a similar offense in another jurisdiction. s. 948.30(4), F.S.

caseload of no more than 30 offenders.<sup>71</sup> Additionally, the probation officers should be trained in sexual offender issues and the operation of electronic monitoring and global tracking.

## **Criminal Punishment Code and Mandatory Minimum Sentences**

### *Criminal Punishment Code*

The Criminal Punishment Code (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>72</sup> Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature.<sup>73</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>74</sup>

A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record, and other aggravating factors.<sup>75</sup> The points are added in order to determine the “lowest permissible sentence” for the offense.<sup>76</sup> A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating “circumstances or factors that reasonably justify the downward departure.”<sup>77</sup> Generally, the permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is 30 years, for a second degree felony is 15 years, and for a third degree felony is 5 years.<sup>78</sup>

### *Mandatory Minimum Sentences*

In addition to the Code, a sentence may be altered by various sentence enhancements. One type of sentence enhancement is mandatory minimum terms of imprisonment (mandatory minimum), which are provided for by statute. A few examples of mandatory minimums provided for by statute include the offenses of drug trafficking<sup>79</sup> and possession of a weapon by specified persons.<sup>80</sup>

With few exceptions, the sentencing court must impose the mandatory minimum term – there is no judicial discretion. There are only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term: when the court sentences a defendant as a youthful offender,<sup>81</sup> and when the state attorney waives the mandatory minimum.<sup>82</sup> Only the state attorney has the discretion to waive the mandatory minimum for an offense.<sup>83</sup> Generally, although the state attorney can waive a minimum mandatory, the state attorney cannot grant a reduction of the minimum mandatory.<sup>84</sup>

Rule 3.704(c)(26) of the Florida Rules of Criminal Procedure specifies that if the lowest permissible sentence is less than a mandatory minimum, the mandatory minimum takes precedence. If the lowest permissible sentence exceeds the mandatory minimum, the lowest permissible sentence takes precedence.<sup>85</sup> A defendant serving a mandatory minimum term is eligible to receive incentive gain time

---

<sup>71</sup> DOC reports that the current caseload ratios are 40:1. DOC, Agency Analysis 2016 HB 1179, p. 4 (January 22, 2016)(hereinafter cited as “DOC Analysis”).

<sup>72</sup> s. 921.002, F.S.

<sup>73</sup> s. 921.0022, F.S.

<sup>74</sup> s. 921.0023, F.S.

<sup>75</sup> s. 921.0024, F.S.

<sup>76</sup> *Id.*

<sup>77</sup> s. 921.0026, F.S.

<sup>78</sup> s. 775.082, F.S.

<sup>79</sup> s. 893.135, F.S.

<sup>80</sup> s. 775.087, F.S.

<sup>81</sup> s. 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012).

<sup>82</sup> 16 Fla. Prac., Sentencing s. 6:79 (2015-2016 ed.).

<sup>83</sup> *Id.*

<sup>84</sup> *Figuerreo v. State*, 42 So. 3d 887 (Fla. 3d DCA 2010).

<sup>85</sup> Fla. R. Crim. P. 3.704(c)(26).

credit unless the award of such credit is specifically prohibited by the statute under which the defendant was sentenced.<sup>86</sup>

Additionally, some statutes that require mandatory minimums specifically permit the imposition of a mandatory minimum even if such sentence exceeds the statutory maximum sentence permitted.

### *Dangerous Sexual Felony Offender*

In part, a Dangerous Sexual Felony Offender (DSFO) is any person, 18 years of age or older, who:

- Is convicted of a violation of:
  - Section 787.025(2)(c), F.S. (luring or enticing a child);
  - Section 794.011(2), (3), (4), (5), or (8), F.S. (sexual battery);
  - Section 800.04(4) or (5), F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 825.1025(2) or (3), F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
  - Section 827.071(2), (3), or (4), F.S. (sexual performance by a child); or
  - Section 847.0145, F.S. (selling or buying of minors); or
  - Of any similar offense under a former designation; and
- Has previously been convicted<sup>87</sup> of a violation of any above-mentioned offense or any offense under a former statutory designation which is similar in elements to any of the enumerated offenses.<sup>88</sup>

A person sentenced as a DSFO must be sentenced to a 25-year mandatory minimum up to, and including, life imprisonment. However, if the offense resulting in the sentence as a DSFO was committed on or after October 1, 2014, a DSFO must be sentenced to a 50-year mandatory minimum up to, and including, life imprisonment.

A person sentenced as a DSFO must be sentenced to the mandatory minimum even if the mandatory minimum exceeds the statutory maximum sentence.<sup>89</sup> Additionally, if the mandatory minimum is less than the sentence that could be imposed under the Code, the sentence imposed must include the mandatory minimum under s. 794.0115, F.S.<sup>90</sup>

A person sentenced to a mandatory minimum as a DSFO is not eligible for statutory gain-time<sup>91</sup> or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release<sup>92</sup> before serving the mandatory minimum.

### Effect of the Bill

As noted above, a person that meets specified conditions must be designated as sexual predator or offender. Additionally, a specified person that commits a specified new sexual offense must be sentenced to a mandatory minimum. The bill creates a new designation as a “serious sexual felony offender” (SSFO) and provides a person is a SSFO that must be sentenced to a ten-year mandatory minimum if the person has previously been designated as a sexual predator or offender<sup>93</sup> and commits

a new specified sexual offense, including a felony violation, or an attempt thereof, of:

- 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);

---

<sup>86</sup> 16 Fla. Prac., Sentencing s. 6:79 (2015-2016 ed.)

<sup>87</sup> A prior nolo contendere plea and a withhold of adjudication for a qualifying offense constitutes a prior “conviction” for purposes of the DSFO Act. *State v. Mason*, 979 So. 2d 301 (Fla. 5th DCA 2008).

<sup>88</sup> s. 794.0115, F.S.

<sup>89</sup> s. 794.0115(6), F.S.

<sup>90</sup> s. 794.015(6), F.S.

<sup>91</sup> Statutory gain time is provided for pursuant to s. 944.275, F.S.

<sup>92</sup> Conditional medical release is provided for pursuant to s. 947.149, F.S.

<sup>93</sup> The bill provides that this provision also applies to persons who have a similar designation or are subject to similar registration requirements in another jurisdiction.

- Sections 787.01, F.S. (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor;
- Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
- Section 794.05, F.S. (unlawful activity with certain minors);
- Section 810.145(8)(b), F.S. (relating to video voyeurism);
- Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
- Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender)

The ten-year minimum mandatory only applies to violations of the above-mentioned offenses that are committed on or after October 1, 2016.

Thus, a person who meets the above-mentioned factors and is sentenced as a SSFO will be:

- Subject to the ten-year mandatory minimum for a third degree felony, or a second degree attempt thereof, even though the maximum penalty in both instances is five years imprisonment; and
- Ineligible for any statutory gain time or discretionary early release.

Additionally, the bill provides that the act may be cited as the “Dangerous and Serious Sexual Felony Offenders Act.”

### **Miscellaneous**

Lastly, the bill provides that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.

## **B. SECTION DIRECTORY:**

Section 1. Creates s. 775.32, F.S., relating to offender registration fees.

Section 2. Amends s. 794.0115, F.S., relating to dangerous sexual felony murder; mandatory sentencing.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 5. Amends s. 948.001, F.S., relating to definitions.

Section 6. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 7. Provides for severability.

Section 8. Provides an effective date of October 1, 2016.

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

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

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

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

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

On January 29, 2016, the Criminal Justice Impact Conference (CJIC) determined that HB 1179 will have an overall positive significant prison bed impact (i.e., an increase of more than 25 prison beds). The provisions of HB 1179 which were used to formulate CJIC's determination that the bill will result in a positive significant impact are substantively similar to the provisions in PCS for HB 1179, including the imposition of a mandatory minimum on specified sexual offenders, expanded application of special conditions of supervision under s. 948.30, F.S., and expanding the sexual offender designation and registration requirements to apply to the offense of deriving support from prostitution.

DOC considered the provision in the original bill imposing a mandatory minimum and reported that it will result in the need for an additional 95 prison beds over ten years.<sup>94</sup> Additionally, DOC reports that the provision requiring supervision of specified sexual offenders to be managed by probation officers with no more than 30 cases (current ratios are at 40:1) will result in the need for a total of 41 full-time employee positions.<sup>95</sup> Lastly, DOC reports that the provision expanding the application of special conditions of supervision to specified sexual offenders will result in the increased need for electronic monitoring funding in the amount of \$1,003,568 dollars through Fiscal Year 2019-2020.<sup>96</sup>

An additional provision of PCS for HB 1179 that was not considered by CJIC or DOC is the imposition of a ten-year mandatory minimum on specified sexual offenses even if the maximum permissible sentence by law would otherwise be five years and the prohibition on a person sentenced to a mandatory minimum under the bill being eligible for incentive gain-time or early discretionary release. Thus, the provision in PCS for HB 1179 imposing a mandatory minimum sentence will result in the bill having an indeterminate positive increase on the prison bed impact.

Lastly, the bill creates a new second degree misdemeanor for the failure to pay registration fees. If a specified offender is still on supervision for an underlying sexual offense and fails to pay registration fees after a court finds that he or she has the ability to pay, the bill may result in such offender being arrested for the offense of failure to pay. This will result in a violation of probation, which could result in the offender being sentenced to prison on the violation. To the extent that such prison sentences occur, the bill will likely result in an indeterminate negative prison bed impact.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The bill authorizes the sheriff to impose registration fees on specified offenders that are required to register. To the extent that sheriff's utilize this provision, the bill will result in a positive fiscal impact of local government revenues.

### 2. Expenditures:

As noted above, the bill creates a new second degree misdemeanor for failure to pay registration fees. To the extent that a person is arrested, booked in the jail, and/or sentenced to jail time for failure to pay applicable registration fees, the bill could result in a negative jail bed impact on local governments.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

## D. FISCAL COMMENTS:

None.

---

<sup>94</sup> DOC Analysis, p. 4.

<sup>95</sup> *Id.*, p. 6-7.

<sup>96</sup> *Id.*, at 7.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it 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 3, 2016, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Adds the offense of “deriving support from the proceeds of prostitution” to the list of offenses that require a person to be designated as a sexual offender;
- Authorizes the sheriff to impose fees on offenders of special concern for registering in accordance with statutory registration requirements;
- Revises the definition of “sex offender probation” or “sex offender community control;”
- Expands the application of special conditions of supervision for specified sexual offenses to a person that commits a specified qualifying offense if, at the time of the qualifying offense, such person had previously been designated as a sexual predator or offender;
- Codifies the court’s authority to impose special conditions of supervision for specified sexual offenses on an offender even if the offense does not statutorily require special conditions;
- Requires probation officers supervising specified persons on special conditions to not exceed a case count of more than 30; and
- Requires a sexual predator or offender who commits a new specified sexual offense to be sentenced to a ten-year mandatory minimum term of imprisonment.

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