

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1301 Use or Operation of a Drone by Certain Offenders

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

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	8 Y, 0 N	Smith	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

A drone is an unmanned aircraft that is manufactured in varying sizes and can be flown by remote control or on a programmed flight path. Drones can be equipped with surveillance devices such as thermal imaging cameras, laser scanners, and devices that intercept electronic transmissions. The Federal Aviation Administration (FAA) is in charge of overseeing the integration of drones into U.S. airspace. Using drones for research or commercial purposes requires special FAA approval, but flying model aircraft or drones for recreational purposes does not.

The Florida Sexual Predators Act (Act) contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of a list of enumerated offenses.

The bill creates a third degree felony for a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill would have an insignificant impact on prison beds.

The bill is effective October 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Drones**

A drone is an unmanned aircraft that can be flown by remote control or on a programmed flight path<sup>1</sup> and can be as small as an insect or as large as a commercial airliner.<sup>2</sup> Drones can be equipped with various devices such as thermal imaging cameras,<sup>3</sup> laser scanners,<sup>4</sup> and devices that intercept electronic transmissions.<sup>5</sup> The demand for drones is concentrated primarily in military, civil government, and commercial use.<sup>6</sup>

#### Non-Military Drone Use

The Federal Aviation Administration (FAA) is in charge of overseeing the integration of drones into U.S. airspace.<sup>7</sup> In doing so, it must balance the integration of drones with the safety of the nation's airspace.<sup>8</sup> The FAA has allowed the use of drones since 1990 for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.<sup>9</sup> More recently the FAA has exercised more control over the operation of drones in national airspace, such as prohibiting drone operations over major urban areas.<sup>10</sup>

Flying model aircraft or drones for recreational purposes does not require FAA approval, but recreational users must still follow the laws and safety guidelines that apply to operating drones in national airspace.<sup>11</sup> The FAA authorizes non-recreational drone operations through separate processes for private<sup>12</sup> and governmental<sup>13</sup> drone operators.

#### **Sex Offenders**

Section 775.21, F.S., provides the Florida Sexual Predators Act (Act). The Act contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

- 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:

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<sup>1</sup> Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (April 3, 2013), [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>2</sup> Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, CONGRESSIONAL RESEARCH SERVICE (Jan. 3, 2012), [www.fas.org/sgp/crs/natsec/R42136.pdf](http://www.fas.org/sgp/crs/natsec/R42136.pdf).

<sup>3</sup> See, e.g., MICRODRONES, *Products*, <https://www.microdrones.com/en/products/equipment/> (last visited Jan. 26, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/#5cab449e66f9> (last visited Jan. 26, 2016).

<sup>6</sup> FEDERAL AVIATION ADMIN., *FAA Aerospace Forecast: Fiscal Years 2011-2031*, [https://www.faa.gov/data\\_research/aviation/aerospace\\_forecasts/media/2011%20Forecast%20Doc.pdf](https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/2011%20Forecast%20Doc.pdf) (last visited Jan. 26, 2016).

<sup>7</sup> FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems*, <https://www.faa.gov/uas/> (last visited Jan. 26, 2016).

<sup>8</sup> FEDERAL AVIATION ADMIN., *Fact Sheet—Unmanned Aircraft Systems (UAS)*, (Feb. 15, 2015) [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=18297](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297) (last visited Jan. 26, 2016).

<sup>9</sup> *Id.*

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

<sup>11</sup> *Id.*; FEDERAL AVIATION ADMIN., *Model Aircraft Operations*, [https://www.faa.gov/uas/model\\_aircraft/](https://www.faa.gov/uas/model_aircraft/) (last visited Jan. 27, 2016) (providing a list of general safety guidelines that recreational model aircraft operators must follow).

<sup>12</sup> Private drone operators are non-governmental and non-recreational operators, often referred to as “civil” operators. FEDERAL AVIATION ADMIN., *Civil Operations (Non-Governmental)*, [https://www.faa.gov/uas/civil\\_operations/](https://www.faa.gov/uas/civil_operations/) (last visited Jan. 27, 2016).

<sup>13</sup> Federal Aviation Admin., *Public Operations (Governmental)*, [https://www.faa.gov/uas/public\\_operations/](https://www.faa.gov/uas/public_operations/) (last visited Jan. 27, 2016).

- 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;<sup>14</sup>
- 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. (buying or selling minors); or
- Any felony violation, or attempted violation 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 offender is not the victim's parent or guardian;<sup>15</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.;<sup>16</sup>
  - 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).<sup>17</sup>

If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided<sup>18</sup> in the Act, and is subject to the community and public notification as provided<sup>19</sup> in the Act.<sup>20</sup>

Section 775.21(10)(b), F.S., creates a third degree felony<sup>21</sup> for certain acts committed by a sexual predator who has been held criminally liable for committing crimes enumerated in the Act. Specifically, the section provides that a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of guilt, any violation, or attempted violation, of ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S., excluding s. 794.011(10), F.S.; ss. 794.05; former 796.03; former 796.035; 800.04; 827.071; 847.0133; 847.0135(5); 847.0145; or 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who

<sup>14</sup> These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

<sup>15</sup> *Id.*

<sup>16</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

<sup>17</sup> s. 775.21(4)(a)1.a., F.S.

<sup>18</sup> Registration requirements are provided under s. 775.21(6), F.S.

<sup>19</sup> Community and public notification requirements are provided under s. 775.21(7), F.S.

<sup>20</sup> s. 775.21(4)(c), F.S.

<sup>21</sup> 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.

works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Florida law currently does not have any similar provisions in place to prohibit a sexual offender from using a drone or similar device for the purpose of viewing a minor.

### **Effect of the Bill**

The bill creates s. 810.146, F.S., making it a third degree felony for a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill defines key terms:

- A drone is defined in accordance with s. 934.50, F.S.
- A qualifying offense is an offense under:
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), involving a minor victim;
  - 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 involving persons less than 16 years of age);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (protection of minors / obscenity);
  - Section 847.0135(5), F.S. (lewd and lascivious exhibition via a computer transmission);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); or
  - A violation of another jurisdiction's similar law when the victim of the offense was a minor; and

The bill adds the new criminal prohibition to the Offense Severity Ranking Chart.

### **B. SECTION DIRECTORY:**

Section 1. Creates s. 810.146, F.S., relating to use or operation of a drone by certain offenders; penalty.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. 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:**

The Criminal Justice Impact Conference met on January 29, 2016, and determined this bill would have an insignificant impact on prison beds.

Per FDLE, as of June 2015, there were 3,051 sexual predators in Florida who were not incarcerated or civilly committed. There is no available data on drone usage by sexual predators.<sup>22</sup>

There were 80 sexual predators sentenced in FY 14-15 for the various penalties listed under s. 775.21, F.S., with 46 sentenced to prison, which generally involved failure to report address changes, providing false information, and failure to register. There were no sexual predators sentenced for “working, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate.”<sup>23</sup>

**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:

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 the need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill places the new criminal prohibition in s. 775.21, F.S., which is intended to govern administrative sexual predator registration rather than criminal prohibitions. The criminal prohibition should be moved to a section of statute more appropriate for criminal prohibitions.

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<sup>22</sup> Criminal Justice Impact Conference, “*SB 510- Sexual Predators (Identical HB 1301)*”, January 29, 2016, On file with the House Justice Appropriations Subcommittee.

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

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Moves the criminal prohibition from s. 775.21, F.S., into newly-created s. 810.146, F.S.
- Removes unnecessary conforming changes.
- Clarifies language in the bill.

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