

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1055 Law Enforcement Activities

SPONSOR(S): Criminal Justice Subcommittee, Brannan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1552

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

SUMMARY ANALYSIS

Every second Monday in September is designated as “Florida Missing Children’s Day” (FMCD) in remembrance of Florida’s past and present missing children and to recognize Florida’s continued efforts to protect the safety of the state’s children through prevention, education, and community involvement. The Florida Missing Children’s Day Foundation (Foundation) is a citizen support organization within the Florida Department of Law Enforcement, designed to provide assistance, funding, and support for the annual FMCD event and to raise awareness for child safety. Currently, the Foundation is only authorized to use funds gathered by private and public donations in furtherance of FMCD.

In Florida, sexual predators and sexual offenders must meet certain registration requirements, such as:

- Reporting in-person to a sheriff’s office within 48 hours after any change in vehicle ownership;
- Providing information regarding out-of-state or international travel or a change of residence within 48 hours before the date he or she intends to leave for such travel or to establish a new residence.
 - However, reporting international travel is only required if the intended change in residence is for five or more days.

Generally, failing to comply with registration requirements is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.

CS/HB 1055 authorizes the Foundation to use excess funds, only after FMCD is fully funded, to issue grants for missing and unidentified persons investigations and special training to resolve such cases.

The bill amends sexual offender and sexual predator reporting requirements to allow online reporting of changes in vehicle registration, rather than in-person. By removing the requirement of in-person reporting when an offender changes his or her vehicle, the bill may result in more frequent and accurate reporting of vehicle changes.

The bill clarifies the requirements for sexual offenders and sexual predators traveling or establishing a new residence to require reporting *at least* 48 hours before the date of intended travel or change in residence, rather than *within* 48 hours, removing any confusion regarding when such information must be provided. The bill also requires an offender to report international travel, regardless of how long he or she intends to reside in another location, rather than limiting the requirement to a change in residence lasting five days or more.

The bill may increase funds to state and local law enforcement agencies to support the investigation of, and special training related to, missing and unidentified persons cases. The bill may reduce costs for local sheriffs’ offices by reducing the time and staff needed to assist with in-person registration of vehicle changes.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

CSOs and DSOs

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations authorized to carry out specific tasks in support of public entities or public causes. A CSO's or DSO's function and purpose is prescribed by its enacting statute, and, for most, by a written contract with the agency it supports. CSOs and DSOs are subject to audits by the Auditor General¹ and are subject to public records requirements. Each CSO and DSO is required to report, among other things, information relating to its organization, mission, and finances to the agency it was created to support by August 1 of each year. Specifically, the CSO or DSO must provide:²

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

When the Legislature creates or authorizes the creation of a CSO or DSO, it must provide for automatic repeal on October 1 of the fifth year after enactment, unless the CSO or DSO is reviewed and saved from repeal through reenactment by the Legislature.³

Florida Missing Children's Day

Under s. 683.23, F.S., every second Monday in September is designated as "Florida Missing Children's Day" (FMCD) in remembrance of Florida's past and present missing children and to recognize Florida's continued efforts to protect the safety of the state's children through prevention, education, and community involvement.⁴ Each year, members of the public and law enforcement officers gather on the steps of the Florida Capitol to pay tribute to Florida's missing children who are still missing and those who will never come home again. The Governor, Lieutenant Governor, and Florida Department of Law Enforcement (FDLE) Commissioner are invited to speak.⁵

In 2008, the Legislature created s. 683.231, F.S., authorizing the FDLE to establish a CSO to provide assistance, funding, and promotional support for authorized FMCD activities.⁶ Later that year, the Florida Missing Children's Day Foundation, Inc. (Foundation) was established to provide assistance, funding, and support for FMCD.⁷ In 2018, the Foundation was found in compliance with all statutory requirements for CSOs and was saved from repeal and reenacted.⁸ Currently, the Foundation is only authorized to use funds gathered by private and public donations in furtherance of FMCD.

¹ S. 11.45(3), F.S.

² S. 20.058(1), F.S.

³ S. 20.058(5), F.S.

⁴ Florida Missing Children's Day was created by the Legislature in 2000. Ch. 2000-139, Laws of Fla.

⁵ Florida Department of Law Enforcement, *Florida Missing Children's Day*, <http://www.fdle.state.fl.us/mcic/fmcd.aspx> (last visited Feb. 4, 2020).

⁶ Ch. 2008-249, Laws of Fla.

⁷ Letter from FDLE Commissioner Richard L. Swearingen to Senate President Joe Negron, (Jul. 6, 2017) http://www.fdle.state.fl.us/open-government/documents/CSO_FMCDLetter_2017.aspx (last visited Feb. 4, 2020).

⁸ Ch. 2018-54, L.O.F.

Florida Sexual Offenders and Sexual Predators

Sexual Offenders

Under Florida law, a person is a sexual offender if he or she:

- Was released on or after October 1, 1997, from a criminal sanction resulting from a qualifying conviction;⁹
- Establishes or maintains a residence in Florida and has not been designated a sexual predator by a court of this state but has been designated a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction, if such designation subjects or would subject him or her to registration or public notification in that state or jurisdiction;¹⁰
- Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a qualifying conviction;¹¹ or
- Has been adjudicated delinquent on or after July 1, 2007, for a qualifying offense, if the juvenile was at least 14 years old at the time he or she committed the offense.¹²

Qualifying convictions for sexual offender designation include:

- Sexual misconduct with an individual with a developmental disability;¹³
- Sexual misconduct with a mental health patient by an employee;¹⁴
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;¹⁵
- Luring or enticing a child, with a prior sexual conviction;¹⁶
- Human trafficking;¹⁷
- Sexual battery;¹⁸
- Unlawful sexual activity with minors;¹⁹
- Lewd or lascivious battery, molestation, conduct, or exhibition;²⁰
- Video voyeurism with prior video voyeurism conviction;²¹
- Lewd or lascivious offense on an elderly person;²²
- Sexual performance by a child;²³
- Providing obscene materials to a minor;²⁴
- Computer pornography involving minors;²⁵
- Soliciting a minor over the internet;²⁶
- Traveling to meet minors;²⁷
- Lewd or lascivious exhibition over the internet;²⁸
- Transmission of child pornography by electronic device or equipment;²⁹
- Transmission of material harmful to minors;³⁰
- Selling or buying minors to engage in sexually explicit conduct;³¹

⁹ S. 943.0435(1)(h)1.a.(II), F.S.

¹⁰ S. 934.0435(1)(h)1.b., F.S.

¹¹ S. 934.0435(1)(h)1.c., F.S.

¹² S. 934.0435(1)(h)1.d., F.S.

¹³ S. 393.135(2), F.S.

¹⁴ S. 394.4593(2), F.S.

¹⁵ Ss. 787.01 and 787.02, F.S.

¹⁶ S. 787.025(2), F.S.

¹⁷ Ss. 787.06(3)(b), (d), (f), or (g), F.S.

¹⁸ S. 794.011, excluding s. 794.011(10), F.S.

¹⁹ S. 794.05, F.S.

²⁰ S. 800.04, F.S.

²¹ S. 810.145(8), F.S.

²² S. 825.1025, F.S.

²³ S. 827.071, F.S.

²⁴ S. 847.0133, F.S.

²⁵ S. 847.0135(2), F.S.

²⁶ S. 847.0135(3), F.S.

²⁷ S. 847.0135(4), F.S.

²⁸ S. 847.0135(5), F.S.

²⁹ S. 847.0137, F.S.

³⁰ S. 847.0138, F.S.

- Racketeering with written findings that the racketeering involved at least one sexual offense;³²
- Sexual misconduct with a forensic client;³³ and
- Sexual misconduct by an employee on a juvenile offender.³⁴

Qualifying delinquency adjudications for sexual offender designation include:

- Sexual battery;³⁵
- Lewd or lascivious battery by encouraging, forcing, or enticing any person under 16 years old to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,³⁶ if either:
 - The victim is under 12 years old; or
 - The court finds sexual activity by the use of force or coercion;
- Lewd or lascivious molestation against a victim less than 12 years old,³⁷ if the court finds molestation involving unclothed genitals;
- Lewd or lascivious molestation against a victim at least 12 years old but less than 16 years old,³⁸ if the court finds both:
 - Use of force or coercion; and
 - Unclothed genitals.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;³⁹
- Capital, life, or first degree felony sexual battery;⁴⁰
- Capital, life, or first degree felony lewd or lascivious battery or molestation;⁴¹
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;⁴²
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;⁴³ or
- A conviction for a similar offense committed in another jurisdiction.⁴⁴

The court must make written findings designating a person who meets the criteria as a sexual predator.⁴⁵

³¹ S. 847.0145, F.S.

³² S. 895.03, F.S.

³³ S. 916.1075(2), F.S.

³⁴ S. 985.701(1), F.S.

³⁵ S. 794.011, F.S.

³⁶ S. 800.04(4)(a)2., F.S.

³⁷ S. 800.04(5)(c)1., F.S.

³⁸ S. 800.04(5)(d), F.S.

³⁹ Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

⁴⁰ *Supra*, note 35.

⁴¹ S. 800.04, F.S.

⁴² *Supra*, note 31.

⁴³ S. 775.21(4)(a)1.b., F.S.

⁴⁴ S. 775.21(4), F.S.

⁴⁵ Ss. 775.21(4)(c) and 775.21(5), F.S.

Registration Requirements for Sexual Offenders and Sexual Predators

Initial Registration

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing a permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.⁴⁶

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility;⁴⁷
 - If the sexual predator is under DOC's supervision but not in custody, he or she must register within three days of the court designating him or her as a sexual predator;⁴⁸
- With the custodian of the local jail, within three days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;⁴⁹
- In person at the sheriff's office in the county where:
 - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;⁵⁰ or
 - The sexual predator was designated a sexual predator within 48 hours after such finding is made.⁵¹

Additionally, within 48 hours of registration, a sexual offender or a sexual predator who is not incarcerated and resides in the community must register in person at a driver license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and:

- Secure a Florida driver license, renew a Florida driver license, or secure an identification card, if otherwise qualified;
- Identify himself or herself as a sexual offender or sexual predator;
- Provide his or her permanent, temporary, or transient residence; and
- Submit to a photograph.⁵²

Information Required for Registration

During his or her initial registration, the sexual offender or sexual predator must provide the following information:

- Name;
- Date of birth;
- Social Security number;
- Race;
- Sex;
- Height and weight;
- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints and palm prints;
- Photograph;
- Employment information;
- Address of permanent or legal residence;

⁴⁶ S. 943.0435(2)(a)1., F.S.

⁴⁷ S. 775.21(6)(b), F.S.

⁴⁸ *Id.*

⁴⁹ S. 775.21(6)(c), F.S.

⁵⁰ S. 775.21(6)(e)a., F.S.

⁵¹ S. 775.21(6)(2)b., F.S.

⁵² S. 775.21(6)(f)1., F.S.

- Address of any current temporary residence;
- Address, location, or description of any transient residence, if the person does not have a permanent or temporary address;
- Dates of any current or known future temporary residence;
- Make, model, color, vehicle information number, and license tag number of all vehicles owned;
- Home and cellular telephone numbers;
- Electronic mail addresses;
- Internet identifiers and each Internet identifier's corresponding website homepage or application software name;
- Date and place of each conviction and a brief description of the crime or crimes committed by the offender;
- Information about immigration status, if the person is an alien;
- Information about any professional licenses;
- Vehicle identification number, license tag number, registration number, and a description of a motor vehicle, trailer, mobile home, or manufactured home, if it is the person's residence;
- Hull identification number, manufacturer's serial number, name, registration number, and description of a vessel, live-aboard vessel, or houseboat, if it is the person's residence; and
- Enrollment, volunteer, or employment status at an institution of higher education and the name and address of the institution, if applicable.⁵³

Residence

Residence, for the purposes of registration, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for three or more consecutive days.⁵⁴
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of three or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.⁵⁵
- "Transient residence" means a county where a person lives, remains, or is located for a period of three 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 does not have a specific street address.⁵⁶

Continuing Reporting Requirements

A sexual offender or sexual predator must report in person to reregister at specified intervals:

- Twice a year for most sexual offenders;⁵⁷
- Four times a year for all sexual predators, some sexual offenders, and all juvenile sexual offenders;⁵⁸ or
- Every 30 days for a sexual offender or sexual predator with a transient residence.⁵⁹

A sexual offender or sexual predator must report *in person* to the sheriff's office the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;

⁵³ Ss. 775.21(6)(a) and 943.0435(2)(b), F.S.

⁵⁴ S. 775.21(2)(k), F.S.

⁵⁵ S. 775.21(2)(n), F.S.

⁵⁶ S. 775.21(2)(o), F.S.

⁵⁷ S. 943.0435(14), F.S.

⁵⁸ Ss. 775.21(8)(a) and 943.0435(14), F.S.

⁵⁹ Ss. 775.21(6)(g)2.a. and 943.0435(4)(b)2., F.S.

- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Change in vehicles owned; and
- International and out-of-state travel information.⁶⁰
 - However, reporting international travel is only required if the intended change in residence is for five or more days. This provision may be interpreted to require reporting international travel only if an offender remains at the same residence for longer than five days during his or her travel, but not if he or she moves to a new residence at least every four days.

A sexual offender or sexual predator must submit the following information to the sheriff's office, but may do so through FDLE's *online* system:

- Use of a new electronic mail address or Internet identifier;
- Change to home or cellular telephone numbers;
- Change to employment information; and
- Change in status related to enrollment, volunteering, or employment at institutions of higher education.

Generally, failing to comply with registration requirements is a third degree felony,⁶¹ punishable by up to five years in prison and a \$5,000 fine.⁶²

Effect of Proposed Changes

CS/HB 1055 authorizes the Foundation to use excess funds, only after FMCD is fully funded, to issue grants for missing and unidentified persons investigations and special training to resolve such cases.

The bill amends sexual offender and sexual predator reporting requirements to allow online reporting of changes in vehicle registration, rather than in-person. By removing the requirement of in-person reporting when an offender changes his or her vehicle, the bill may result in more frequent and accurate reporting of vehicle changes.

The bill clarifies the requirements for sexual offenders and sexual predators traveling or establishing a new residence to require reporting at least 48 hours before the date of intended travel or change in residence, rather than within 48 hours, removing any confusion regarding when such information must be provided. The bill also requires an offender to report international travel, regardless of how long he or she intends to reside in another location, rather than limiting the requirement to a change in residence lasting five days or more.

The bill provides an effective date of July 1, 2020.

⁶⁰ Ss. 943.0435(4)(e)2. and 775.21(6)(a)1.a., F.S.

⁶¹ Ss. 775.082 and 775.083, F.S.

⁶² Ss. 775.21(10) and 943.0435(9)(a), F.S.; but see, ss. 775.21(6)(f)3., 775.21(6)(j), 943.0435(4)(c), and 943.0435(8), F.S. (providing for circumstances in which failure to comply with registration requirements is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.).

B. SECTION DIRECTORY:

Section 1: Amends s. 683.231, F.S., relating to citizen support organization for Florida Missing Children's Day.

Section 2: Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

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

Section 4: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase funds to state law enforcement agencies to support the investigation of and special training related to missing and unidentified persons cases.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may increase funds to local law enforcement agencies to support the investigation of, and special training related to, missing and unidentified persons cases.

2. Expenditures:

The bill may reduce costs for local sheriffs' offices by reducing the time and staff needed to assist with in-person registration of vehicle changes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Criminal Justice Subcommittee adopted an amendment and reportedly the bill favorably as a committee substitute. The amendment moved the statutory location for an online vehicle registry option.

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