



**PUBLIC SAFETY
&
DOMESTIC SECURITY
POLICY COMMITTEE**

**TUESDAY, FEBRUARY 16, 2010
10:15 A.M. – 12:00 P.M.
404 HOB**

MEETING PACKET

Larry Cretul
Speaker

Kevin C. Ambler
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Public Safety & Domestic Security Policy Committee

Start Date and Time: Tuesday, February 16, 2010 10:15 am

End Date and Time: Tuesday, February 16, 2010 12:00 pm

Location: 404 HOB

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 23 Parole for Adolescent Offenders by Weinstein

HB 119 Sexual Offenders and Predators by Glorioso

HB 317 Threats by Adkins

HB 319 Medical Expenses of Inmates Paid by a County or Municipality by Hooper

HB 429 Sexual Offenses Involving the Internet by Fetterman

NOTICE FINALIZED on 02/09/2010 16:15 by Thompson.Sonja



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Committee on Public Safety & Domestic Security Policy

**Larry Cretul
Speaker**

**Kevin C. Ambler
Chair**

AGENDA

Tuesday, February 16, 2010

10:15 AM – 12:00 PM

(404 HOB)

- I. Opening remarks by Chair Ambler**
- II. Roll call by CAA**
- III. Consideration of the following bill(s)**
 - HB 23 Parole for Adolescent Offenders by Weinstein**
 - HB 119 Sexual Offenders and Predators by Glorioso**
 - HB 317 Threats by Adkins**
 - HB 319 Medical Expenses of Inmates Paid by a County or Municipality by Hooper**
 - HB 429 Sexual Offenses Involving the Internet by Fetterman**
- IV. Closing Remarks**
- V. Meeting Adjourned**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Parole for Adolescent Offenders
SPONSOR(S): Weinstein and others
TIED BILLS: IDEN./SIM. BILLS: SB 184

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol <i>TIC</i>	Cunningham <i>RC</i>
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill creates the possibility of parole release for adolescent offenders. The bill creates a new inmate designation, "adolescent offender," which is defined as an offender, 15 years old or younger at the time the criminal act was committed, who was sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. The bill excludes an adolescent offender from parole eligibility if he or she had a prior conviction or was adjudicated delinquent for a number of specified offenses. Also, the bill provides that the offender must serve a minimum of 8 years of their sentence before becoming eligible for release.

The bill requires the Florida Parole Commission to conduct an initial eligibility interview with the adolescent offender during the 8th year of incarceration, and every 2 years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program and received no disciplinary reports during the two years prior to the interview and subsequent interviews. The bill provides additional criteria for the consideration of the offender's rehabilitation status.

The bill specifies that an eligible offender must be placed in a facility that has a GED program, unless they have already completed a GED program.

The bill provides that if the offender is granted parole, he or she must participate in any available reentry program for 2 years.

This bill will take effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. Parole is not available for most crimes that were committed on or after October 1, 1983.¹ There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reported that on June 30, 2009, there were 5,826 inmates currently eligible for parole consideration with about 450 under supervision. This includes a small percentage who committed their parole-eligible crime when they were less than 18 years of age.²

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a parole examiner reviews the inmate's file and makes an initial recommendation. The date of the initial interview depends upon the length and type of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter.³ These interviews are limited to determining whether or not information has been gathered

¹ The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

² Parole Commission 2010 Analysis of HB 23.

³ However, s. 947.174(1)(b), F.S., provides for less frequent reviews for an inmate whose PPRD is more than 5 years from the date of the initial interview if he or she was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S. In such cases, subsequent interviews to review the PPRD may be conducted every 5 years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.

which might affect the PPRD.⁴ The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as current progress reports, psychological reports, and disciplinary reports.⁵ In consultation with the department, the commission has developed guidelines defining unsatisfactory institutional record.⁶ The commission has defined what constitutes a satisfactory release plan and verification of the plan prior to release.⁷

The commission determines the terms and conditions of parole. Statutorily, conditions of parole are not specific, except for provisions that require:

- The offender to submit to random substance abuse testing, if the offender's conviction was for a controlled substance violation.
- The offender to not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- The offender to pay debt due and owing to the state under s. 960.17, F.S., or attorney's fees and costs due and owing to the state under s. 938.29, F.S.⁸
- The offender to pay victim restitution.⁹
- The offender to apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.¹⁰

Most crimes committed by juveniles¹¹ are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A person who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned.¹² A juvenile who is fourteen or older at the time of committing certain felony offenses may be tried as an adult if a grand jury indictment is returned; if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S.; or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Section 985.56, F.S., provides that a juvenile charged with an offense punishable by death or life imprisonment may not be tried as an adult unless a grand jury indictment is returned.

Sentencing and Classification of Offenders

A court may sentence as a "youthful offender" any person:

- Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to ch. 985, F.S.;
- Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and

⁴ Section 947.174(1)(c), F.S.

⁵ Section 947.174(3), F.S.

⁶ Section 947.174(5)(a), F.S.

⁷ Section 947.174(5)(b), F.S.

⁸ Section 947.18, F.S.

⁹ Section 947.181, F.S.

¹⁰ Section 947.185, F.S.

¹¹ Section 985.03(6), F.S., defines juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."

¹² See *Tate v. State*, 864 So.2d 44 (Fla. 4th Dist. 2003).

- Who has not previously been classified as a youthful offender under the provisions of the Florida Youthful Offender Act;¹³ however, any person found guilty of a capital or life felony may not be sentenced as a youthful offender under the act.¹⁴

Separate institutions and programs exist for youthful offenders that fall into two age groups: age 14 to 18 years old and age 19 to 24 years old.¹⁵ The department may initially assign inmates who are less than 18 years of age and who have not been assigned by the sentencing judge to a facility for youthful offenders under the provisions of chapter 958 to a facility designated for youthful offenders.¹⁶ The department is required to screen all institutions, facilities, and programs for inmates who meet the requirements specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years and the department may classify those inmates as a youthful offender.¹⁷ The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if the department determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.¹⁸

Parole for juveniles who received more than a 10 year adult prison sentence was one of the recommendations made by the Blueprint Commission through the Department of Juvenile Justice.¹⁹

Proposed Changes

HB 23 creates the offender designation of adolescent offender, which is defined as an offender who was 15 years old or younger at the time of the criminal act who is sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. An adolescent offender may be eligible for parole release.

The bill defines the term "current offense" as one or more crimes committed by the adolescent offender within a 1-month period of time or for which sentences run concurrently.

The bill excludes an adolescent offender from parole eligibility if he or she, before the current offense, had a prior conviction or was adjudicated delinquent for a number of specified offenses:

- Murder,
- Felony battery,
- Aggravated battery,
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents or other specified officers,
- Assault or battery on persons 65 years of age or older,
- Kidnapping,
- Persons engaged in criminal offense, having weapons,
- Sexual battery,
- Carjacking,
- Home-invasion robbery,

¹³ Sections 958.011-958.15, F.S.

¹⁴ Section 958.04(1)(c), F.S.

¹⁵ Section 958.11(1), F.S.

¹⁶ Section 944.1905(5)(a), F.S.

¹⁷ Section 958.11(4), F.S.

¹⁸ Section 958.11(6), F.S.

¹⁹ "Getting Smart about Juvenile Justice in Florida," January 2008.

- Abuse, aggravated abuse, and neglect of a child, or
- Cruelty to animals.

The bill requires the commission to conduct an initial eligibility interview during the 8th year of incarceration, and every 2 years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program unless waived due to a disability, and received no disciplinary reports for a period of at least two years. The bill provides additional criteria for the consideration of the offender's rehabilitation status. The hearing examiner must take into serious consideration the wishes of the victim or the opinions of the victim's next of kin, and consider whether:

- The offender was principal to the criminal offense or an accomplice, a relatively minor participant, or acted under extreme duress or domination of another person,
- The offender has shown remorse for the criminal offense,
- The offender's age, maturity, and psychological development at the time of the offense affected her or his behavior,
- The offender, while in the custody of the department, aided inmates suffering from catastrophic or terminal medical, mental or physical conditions or has prevented risk or injury to staff, citizens, or other inmates,
- The offender has successfully completed educational and self-rehabilitation programs, and
- The offender was a victim of sexual, physical, or emotional abuse.

The bill specifies that an adolescent offender must be placed in a facility that has a GED program,²⁰ unless the offender has already completed a GED program.

The department reports that 432 inmates currently incarcerated committed their primary offense at age 15 or younger and are serving a sentence of 10 years or more. Of these inmates, 154 have served 8 years of their sentence and would be eligible for an initial interview. Of these 154 inmates, 72 have attained GEDs. Of those 72 inmates, only 23 have had no disciplinary reports in the preceding 2 years.²¹

The bill provides that if the offender is granted parole, he or she must participate in any available reentry program for 2 years. The bill defines "re-entry program" as a program that promotes effective reintegration of adolescent offenders back into communities upon release and provides one or more of the following: vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. Priority shall be given to re-entry programs that are residential, highly structured, self-reliant, and therapeutic communities.

This bill will take effect upon becoming a law and will apply with respect to offenses committed before, on, or after that date.

B. SECTION DIRECTORY: Section 1. Provides a title for this act as the "Second Chance for Children in Prison Act."

Section 2. Amends s. 947.16, F.S.; relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 3. Provides that if an adolescent offender is eligible, he or she must receive an initial interview in their 8th or subsequent year of incarceration on the effective date of this act.

Section 4. This bill takes effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

²⁰ According to the Department of Corrections 2009 Analysis of HB 757, only one third of the adult facilities have GED programs.

²¹ Department of Corrections 2010 Analysis of HB 23.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections (department) reports that if classification staff are tasked with the responsibilities of a commission's "field examiner," (similar to the duties related to conditional release under §947.1405) it may increase their workload depending on the number to be interviewed. In addition, the department's computerized Offender Based Information System (OBIS) would require some reprogramming to capture information that a given inmate is parole eligible.

For Fiscal Year 2007-2008, the annual cost to house a male youthful offender exceeded \$23,000. Although the department does not anticipate a significant number of inmates would be paroled to justify additional probation officers, the cost avoidance would be offset slightly as the average annual cost of supervision is \$1,856.

The Parole Commission reports that the work increase from reviewing existing and future cases would be slight and does not anticipate a need for increase staff.

The Criminal Justice Impact Conference has not yet provided an analysis of HB 23; however in 2009 it reported an indeterminate fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides very specific language for the hearing examiner to consider regarding whether the inmate has "aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates." This language may be tailored to a situation applicable to an inmate who may be affected by this bill if passed. The language provided in this section applies only to the consideration of the hearing examiner but does not specify if the commission should also consider this criterion when deciding whether the offender is rehabilitated.

The bill would allow adolescent offenders to circumvent the mandatory 85% minimum sentenced served requirement as provided in s. 944.275(4)(b)3., F.S.

The bill does not provide the department an alternative if a suitable re-entry program is not available for a paroled offender.

The bill does not specify which agency will waive the GED requirement.

On November 9, 2009, the Supreme Court of the United States heard oral arguments in the cases of Sullivan v. Florida and Graham v. Florida. Both petitioners were juveniles at the time of their offenses and were sentenced to life in prison without the possibility of parole. The issue in these cases is whether sentencing juveniles who committed non-homicide offenses to life in prison without the possibility of parole is cruel and unusual punishment under the Eighth Amendment.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HB 23

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1 A bill to be entitled

2 An act relating to parole for adolescent offenders;
3 providing a short title; amending s. 947.16, F.S.;
4 providing definitions; providing that an adolescent
5 offender who was 15 years of age or younger at the time of
6 commission of an offense and who is sentenced to life or a
7 single or cumulative term of 10 years or more in prison is
8 eligible for parole if the offender has been incarcerated
9 for a minimum period and has not previously been convicted
10 of or adjudicated delinquent for certain offenses;
11 requiring an initial eligibility interview to determine
12 whether the adolescent offender has been sufficiently
13 rehabilitated for parole; providing criteria to determine
14 sufficient rehabilitation; providing eligibility for a
15 reinterview after a specified period for adolescent
16 offenders denied parole; providing that the adolescent
17 offender be incarcerated in a facility that has a GED
18 program; providing that if the adolescent offender is
19 granted parole, the adolescent offender must participate
20 in any available reentry program for 2 years; defining the
21 term "reentry program"; providing priority for certain
22 programs; providing for eligibility for an initial
23 eligibility interview for offenders in their eighth or
24 subsequent year of incarceration on the effective date of
25 the act; providing for retroactive application; providing
26 an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. This act may be cited as the "Second Chance for Children in Prison Act."

Section 2. Subsections (2) through (6) of section 947.16, Florida Statutes, are renumbered as subsections (3) through (7), respectively, and a new subsection (2) is added to that section to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission; adolescent offender eligibility.--

(2) (a) As used in this subsection, the term:

1. "Adolescent offender" means an offender who was 15 years of age or younger at the time the criminal act was committed and was sentenced to life or to a single or cumulative term of imprisonment of 10 years or more.

2. "Current offense" means the offense for which the adolescent offender is being considered for parole and any other crimes committed by the adolescent offender within a 1-month period of that offense, or for which sentences run concurrent to that offense.

(b) Notwithstanding the provisions of subsection (1) or of any other law to the contrary, an adolescent offender may be eligible for parole as provided in this subsection. An adolescent offender is ineligible under this subsection if she or he, before conviction of the current offense, was convicted of or adjudicated delinquent for any violation of:

- 1. Section 782.04, entitled "Murder";
- 2. Section 784.041, entitled "Felony battery; domestic

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- 57 | battery by strangulation";
- 58 | 3. Section 784.045, entitled "Aggravated battery";
- 59 | 4. Section 784.07, entitled "Assault or battery of law
- 60 | enforcement officers, firefighters, emergency medical care
- 61 | providers, public transit employees or agents, or other
- 62 | specified officers; reclassification of offenses; minimum
- 63 | sentences";
- 64 | 5. Section 784.08, entitled "Assault or battery on persons
- 65 | 65 years of age or older; reclassification of offenses; minimum
- 66 | sentence";
- 67 | 6. Section 787.01, entitled "Kidnapping; kidnapping of
- 68 | child under age 13, aggravating circumstances";
- 69 | 7. Section 790.07, entitled "Persons engaged in criminal
- 70 | offense, having weapons";
- 71 | 8. Section 794.011, entitled "Sexual battery";
- 72 | 9. Section 812.133, entitled "Carjacking";
- 73 | 10. Section 812.135, entitled "Home-invasion robbery";
- 74 | 11. Section 827.03, entitled "Abuse, aggravated abuse, and
- 75 | neglect of a child; penalties"; or
- 76 | 12. Section 828.12(2), entitled "Cruelty to animals."
- 77 | (c) Before an adolescent offender may be granted parole
- 78 | under this subsection, she or he must have an initial
- 79 | eligibility interview to determine whether she or he has been
- 80 | sufficiently rehabilitated while in the custody of the
- 81 | department to justify granting parole. The initial eligibility
- 82 | interview will occur in the eighth year of incarceration. In
- 83 | order to determine if the adolescent offender has been
- 84 | sufficiently rehabilitated, she or he must have successfully

85 completed the General Educational Development (GED) program
86 unless waived based on disability and have received no approved
87 disciplinary reports for a period of at least 2 years
88 immediately prior to the current eligibility interview. The
89 hearing examiner must also take into serious consideration the
90 wishes of the victim or the opinions of the victim's next of kin
91 and consider whether:

92 1. The adolescent offender was a principal to the criminal
93 offense or an accomplice to the offense, a relatively minor
94 participant in the criminal offense, or acted under extreme
95 duress or domination of another person.

96 2. The adolescent offender has shown remorse for the
97 criminal offense.

98 3. The adolescent offender's age, maturity, and
99 psychological development at the time of the offense affected
100 her or his behavior.

101 4. The adolescent offender, while in the custody of the
102 department, has aided inmates suffering from catastrophic or
103 terminal medical, mental, or physical conditions or has
104 prevented risk or injury to staff, citizens, or other inmates.

105 5. The adolescent offender has successfully completed
106 educational and self-rehabilitation programs.

107 6. The adolescent offender was a victim of sexual,
108 physical, or emotional abuse.

109 (d) An adolescent offender who is not granted parole under
110 this subsection after an initial eligibility interview shall be
111 eligible for a reinterview 2 years after the date of the denial
112 of the grant of parole and every 2 years thereafter.

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113 (e) An adolescent offender must serve her or his sentence
114 in a facility that has a General Educational Development (GED)
115 program unless the adolescent offender has already successfully
116 completed a GED program.

117 (f) If the adolescent offender is granted parole, the
118 adolescent offender must participate in any available reentry
119 program for 2 years. As used in this paragraph, the term
120 "reentry program" means a program that promotes effective
121 reintegration of adolescent offenders back into communities upon
122 release and provides one or more of the following: vocational
123 training, placement services, transitional housing, mentoring,
124 or drug rehabilitation. Priority shall be given to those reentry
125 programs that are residential, highly structured, self-reliant,
126 and therapeutic communities.

127 Section 3. An adolescent offender, as defined in s.
128 947.16(2)(a), Florida Statutes, as created by this act, who is
129 in her or his eighth or subsequent year of incarceration on the
130 effective date of this act must receive an initial eligibility
131 interview as provided in s. 947.16(2)(c), Florida Statutes, as
132 created by this act, if she or he is otherwise eligible.

133 Section 4. This act shall take effect upon becoming a law,
134 and applies with respect to offenses committed before, on, or
135 after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 119
SPONSOR(S): Glorioso
TIED BILLS:

Sexual Offenders and Predators

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Domestic Security Policy Committee</u>		<u>Kramer <i>TK</i></u>	<u>Cunningham <i>SKL</i></u>
2) <u>Military & Local Affairs Policy Committee</u>			
3) <u>Criminal & Civil Justice Appropriations Committee</u>			
4) <u>Criminal & Civil Justice Policy Council</u>			
5) _____			

SUMMARY ANALYSIS

The bill creates restrictions for a person convicted of an offense listed in the sexual offender statute where the victim was under the age of 18 as follows:

- The bill makes it a first degree misdemeanor if a person convicted of such an offense commits loitering or prowling within 300 feet of a place where children regularly congregate, including but not limited to, a school, day care center, park or playground.
- The bill makes it a first degree misdemeanor for a person convicted of such an offense to knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature. This will only apply to an offender who committed the sexual offense on or after July 1, 2010.
- The bill also makes it a first degree misdemeanor for a person convicted of such an offense to:
 - o Knowingly be present in any child care facility or pre-K through 12 school or on real property comprising any child care facility or pre-K through 12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;
 - o Fail to notify the child care facility owner or the principal's office when he or she arrives and departs the child care facility or school; or
 - o Fail to remain under the direct supervision of a school official or designated chaperone when present in the vicinity of children.

The bill creates 775.215, F.S. which provides that the adoption of residency distance limitations for persons convicted of a sexual offense is expressly preempted to the state and the provisions of state law establishing such distance limitations supersede the distance limitations in any such municipal or county ordinances.

The bill further provides that any provision of an ordinance adopted by a county or municipality prior to July 1, 2010, imposing residency exclusions for the residence of a sex offender in excess of the requirements of state law is repealed and abolished as of July 1, 2010. The bill provides an exception for a county or municipality ordinance adopted prior to July 1, 2010 upon the recommendation of the chief law enforcement officer of the county or city and upon a finding of public necessity that increases the distance exclusions for residence of a person subject to the provision of state law up to a maximum distance of 1,750 feet.

The bill will prohibit certain offenders on supervision for a sexual offense from visiting areas where children regularly congregate, including but not limited to, schools, day care centers, parks and playgrounds. The bill will prohibit these offenders on supervision from distributing candy or other items to children on Halloween, wearing a Santa Claus, Easter bunny or clown costume or entertaining at children's parties.

On February 25, 2009, the Criminal Justice Impact Conference determined that a substantially similar bill would have an insignificant prison bed impact on the Department of Corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 10/15/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration [Sections 2, 4, 6 and 7]: 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 requirements.¹ Failure to comply with these requirements is a third or second degree felony, depending of the offense.

During initial registration, a sexual predator or sexual offender is required to provide certain information, including the address of his or her permanent or temporary residence, to the sheriff's department who, in turn, provides this information to the Florida Department of Law Enforcement for inclusion in the statewide database. For a sexual predator or sexual offender who is not in the custody of or under the supervision of the Department of Corrections or a local jail, this information must be provided within 48 hours of establishing or maintaining a residence.

A sexual predator or sexual offender is required to update information regarding his or her permanent or temporary residence. A sexual predator or sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence must, within 48 hours after vacating the permanent residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence. Currently, the term "temporary residence" is defined as follows:

a place where the person abides, lodges, or resides for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.²

The bill specifies that the definition includes but is not limited to vacation, business or personal travel destinations in or out of the state.

The bill defines the term "transient residence" to mean:

¹ See generally, ss. 775.21, 943.0435 and 944.607, F.S.

² s. 775.21(2)(g), F.S.

A place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter, and a location that has no specific street address.

The bill requires a sexual predator or sexual offender to provide information regarding his or her transient residence.

Loitering or prowling: Certain sexual predators who have committed an offense against a minor victim and certain offenders who are on supervision for a sexual offense are prohibited from working at specified locations.³ Although there are statutory restrictions on where certain people who have been convicted of a sexual offense can reside,⁴ (discussed below) there are no statutory restrictions on where a person who has been convicted of a sexual offense can visit.

The loitering statute, section 856.021, F.S. provides as follows:

(1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

Currently, a violation of this section is a second degree misdemeanor.

The bill provides restrictions for a person convicted of an offense listed in the sexual offender statute⁵ where the victim was under the age of 18 as follows. The bill provides that if a person convicted of such an offense commits loitering or prowling within 300 feet of a place where children regularly congregate, including but not limited to, a school, day care center, park or playground, the offense will be a first degree misdemeanor.

It will be a first degree misdemeanor for a person convicted of such an offense to knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature. This will only apply to an offender who committed a sexual offense on or after July 1, 2010.

It will also be a first degree misdemeanor for a person convicted of such an offense to:

³ See s. 775.21(10)(b); 947.1405(7)(a)6.; 948.30(1)(f), F.S.

⁴ See s. 794.065; 947.1405(7)(a)2; 948.30(1)(b), F.S.

⁵ The offenses referenced include sections 787.01 (kidnapping); s. 787.02 (false imprisonment); s. 787.025 (luring or enticing a child); s. 794.011 (sexual battery); s. 794.05 (unlawful sexual activity with certain minors); s. 796.03 (procuring a person under the age of 18 for prostitution); s. 796.035, (selling or buying of a minor into sex trafficking or prostitution); 800.04 (lewd or lascivious offenses); 825.1025(2)(b) (lewd or lascivious battery on an elderly person); s. 827.071 (promoting sexual performance by a child); s. 847.0133 (selling or showing obscenity to a minor); 847.0135 (traveling to meet a minor for the purpose of engaging in illegal sexual activity); s. 847.0137; (transmitting child pornography); s. 847.0138 (transmitting material harmful to minors); s. 985.701 (sexual misconduct by a Department of Juvenile Justice employee)

1. Knowingly be present in any child care facility or pre-K through 12 school or on real property comprising any child care facility or pre-K through 12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;
2. Fail to notify the child care facility owner or the principal's office when he or she arrives and departs the child care facility or school; or
3. Fail to remain under the direct supervision of a school official⁶ or designated chaperone when present in the vicinity of children.

The bill provides that it is not a violation of the above provision if, the child care facility or school is a voting location and the offender is present for the purpose of voting during the hours designated for voting or if the offender is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

Unlawful place of residence for persons convicted of certain sex offenses: Before October 1, 2004, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.⁷ In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S. was created⁸ which made it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense⁹, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony.

In recent years, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. According to the Department of Corrections, as of October 19, 2009, there were 148 such local ordinances. Generally, the ordinances appear to be modeled after section 794.065, F.S. but extend the distance from 1,000 feet to 2,500 feet or more. Many of the ordinances also prohibit an offender from living within a certain distance of places such as libraries, churches and bus stops that are not included in the state statute.

A great deal of press coverage has documented that many local residency exclusions make it significantly more difficult for a sexual offender to obtain a legal residence. In Miami-Dade County, a varying number of sexual offenders have reported their address as underneath the Julia Tuttle Bridge.¹⁰

On April 14, 2009, the Broward County Board of County Commissioners adopted an ordinance creating residency exclusions for sexual offenders that was to be effective for ninety days. The commission also created the Sexual Offender & Sexual Predator Residence Task Force on which was required "to review, research, and make recommendations to the Board of County Commissioners regarding the issues involved with the residency restrictions of sexual offenders and sexual predators convicted of certain sex offenses"¹¹

6 The bill defines the term "school official" to mean a principal, school resource officer, teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner or a child care provider.

7 In cases in which the victim was a minor, a sexual predator is prohibited from working in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.

8 See 2004-391, Laws of Florida.

9 Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

¹⁰ *Roadside Camp for Miami Sex Offenders Leads to Lawsuit*, New York Times, July 10, 2009;

<http://www.nytimes.com/2009/07/10/us/10offender.html>

¹¹ RESOLUTION NO. 2009-309; http://bcegov3.broward.org/NewsRelease/Attachments/2199_114_04-28-

[2009_Sexual%20Offender%20resolution.doc](http://www.broward.org/NewsRelease/Attachments/2199_114_04-28-2009_Sexual%20Offender%20resolution.doc)

On August 25, 2009, the final task force report was released. Among the findings found in the task force report were the following:

- Residency restrictions limit housing availability and create an increased number of homeless sex offenders.
- Because 24 cities within the county had adopted residency ordinances, a high percentage of sex offenders were living (sometimes referred to as clustering) in small unincorporated areas.
- A review of the available research on residency restrictions found “no empirical evidence to indicate that these laws achieve their intended goals of preventing abuse, protecting children, or reducing reoffending.”¹²
- No evidence was found indicating that “larger buffer zones are more effective in protecting children than the state’s 1,000-foot restriction.”¹³

Subsequent to the release of the task force report, the Board of County Commissioners removed the repealer language from the previously adopted ordinance. The ordinance prohibits certain sexual offenders in unincorporated parts of the county from living within 2,500 feet of a school, designated public school bus stop, day care center, park or playground.¹⁴

Preemption of local ordinances: [Section 3] The bill creates 775.215, F.S. which provides that the adoption of residency distance limitations for persons convicted of sexual offenses, is expressly preempted to the state and the provisions of sections 794.065, 947.1405 and 948.30, F.S. establishing such distance limitations supersede the distance limitations in any such municipal or county ordinances.

The bill further provides that any provision of an ordinance adopted by a county or municipality prior to July 1, 2010, imposing residency exclusions for the residence of a person subject to the provisions of s. 794.065, 947.1405 or 948.30 in excess of the requirements of those provisions is repealed and abolished as of July 1, 2010. The bill provides an exception for a county or municipality ordinance adopted prior to July 1, 2010 upon the recommendation of the chief law enforcement officer of the county or city and upon a finding of public necessity that increases the distance exclusions for residence of a person subject to the provision of state law up to a maximum distance of 1,750 feet.

In effect, it appears that this section of statute would bar a county or municipality from adopting any residency exclusion ordinance after July 1, 2010 and would only allow ordinances passed prior to that date to be maintained if they applied distance exclusions up to 1,750 feet, were recommended by the county or city’s chief law enforcement officer and based upon a finding of public necessity.

Probation and community control - generally: Probation is a form of community supervision of offenders requiring specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹⁵ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.¹⁶

Conditional release - generally: The conditional release program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.¹⁷ The Parole Commission sets the length and conditions of release after reviewing

¹² Final Report: Sexual Offender & Sexual Predator Residence Task Force, Page 6.

http://www.royalcreations.com/fatsa/Final_Report_-_Sexual_Offender_Sexual_Residence_Task_Force.pdf

¹³ Id.

¹⁴ Chapter 21, Article XI, Sec. 21-164 – Sec. 21-170, Broward County Code of Ordinances.

¹⁵ Section 948.001(5), F.S.

¹⁶ Section 948.001(2), F.S.

¹⁷ Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates

information provided by the Department of Corrections.¹⁸ The Department of Corrections supervises the offender while on conditional release.

Conditions of probation/community control/conditional release: Currently, an offender who is on probation or community control for a specified sexual offense¹⁹ and therefore supervised by the Department of Corrections must comply with additional terms and conditions of supervision including the following:

1. A prohibition from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate if the victim was under the age of 18.²⁰
2. A prohibition on any contact with the victim unless approved by the victim, the offender's therapist and the sentencing court.²¹
3. If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except in specified circumstances.²²
4. If the victim was under the age of 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks and malls.²³

For inmates convicted of certain sexual offenses²⁴ or offenses against children, who are subject to conditional release, section 947.1405(7)(a), F.S., requires the Parole Commission to impose a list of conditions similar to those above.

Additional conditions required by HB 119 [Sections 8 and 9]: The bill amends s. 948.30, F.S. to expand the list of offenses for which additional conditions of supervision must be imposed to include all offenses listed in the sexual offender statute (rather than just the five offenses listed in footnote 14 above) and provides that in addition to all other conditions imposed, if the offense was committed on or after July 1, 2010, the court must impose the following conditions:

1. A prohibition on visiting areas where children regularly congregate, including but not limited to, schools, day care centers, parks and playgrounds. The bill provides that the court may also designate additional locations to protect the victim. The bill provides that this does not prohibit the probationer or community controllee's attendance at religious services²⁵.
2. 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; without prior approval from the Court.

These conditions will apply if the victim was under 18 unless the victim was 16 or 17 and the offender was not more than 21 years of age. Unlike the conditions of probation currently in s. 948.30 relating to residency restrictions which only apply to a person on probation for a specified sexual offense, the new conditions apply to a person "who has been convicted at any time of committing" one of the listed

sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S.

¹⁸ The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

¹⁹ s. 948.30(1)(b), F.S. The specified offenses include sexual battery offenses (chapter 794), lewd or lascivious offenses (s. 800.04, F.S), promoting sexual performance by a child (s. 827.071, F.S.), traveling to meet a minor for the purpose of engaging in illegal sexual activity (874.0135) and selling or buying minors for child pornography (s. 847.0145, F.S.)

²⁰ Section 948.30(1)(b), F.S.

²¹ S. 948.30(1)(d), F.S.

²² s. 948.30(1)(e), F.S.

²³ s. 948.30(1)(f), F.S.

²⁴ Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

²⁵ The bill refers to the definition of the term "religious service" contained in s. 775.0861, F.S. The term is defined as "a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion."

offenses, regardless of the offense for which they are on supervision. The bill also requires that these conditions be placed on conditional releasees who meet the above criteria.

Polygraph examinations: [Sections 8 and 9] Currently, pursuant to s. 948.30(2)(a), F.S., for a probationer or community controllee who committed a specified sexual offense on or after October 1, 1997, the court must order, as part of a treatment program, that the probationer or community controllee participate at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders where available and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove that a violation of probation occurred.

The bill requires that the polygraph examiner be authorized by the DOC. The bill also provides that the results of the polygraph examination must be provided to the probationer or community controllee's probation officer and therapist. The bill makes similar changes to the s. 947.1405, F.S., the conditional release statute.

Evaluation and treatment of offenders on supervision: [Section 10] Section 948.31, F.S. provides that the court must require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, the court must require outpatient counseling as a term or condition of probation or community control for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child or prostitution.

The bill amends this provision to remove reference to the court requiring a "diagnosis" of the probationer or community controllee and retains the reference to an "evaluation". The bill also removes reference to the court requiring "outpatient" treatment and instead refers to "sex offender treatment".

The bill alters the offenses for which this treatment can be ordered, if needed, to include any offense for which a person can be designated as a sexual predator or subject to registration as a sexual offender.

Current law provides that the treatment can be obtained from a community health center, a recognized social service agency providing mental health services, or a private mental health professional or through other professional counseling. The bill amends this to require that the treatment be obtained from a qualified practitioner as defined in s. 948.001.²⁶ Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing an offense listed in the sexual offender statute. The bill provides that the court must impose restrictions against contact with minors if sex offender treatment is recommended.

Search of registration information: [Section 5] Section 943.04342, F.S. provides that when the court places a defendant on misdemeanor probation, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE. The bill requires that the probation service also must search the probationer's name through the Dru Sjodin National Sex Offender Public maintained by the United States Department of Justice.

B. SECTION DIRECTORY:

Section 1. Creates s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children.

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

²⁶ The term "qualified practitioner" is defined to mean a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act.

Section 3. Creates s. 775.215, F.S., relating to residency exclusions for sexual offenders or predators; local ordinances preempted.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 943.04352, F.S., relating to search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.

Section 6. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 7. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 8. Amends s. 947.1405, F.S., relating to conditional release program.

Section 9. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 10. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 11. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 12. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 13. Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates a first degree misdemeanor offense for a person who has been convicted of a specified sexual offense to loiter or prowl within 300 feet of certain places. The bill will also make it a first degree misdemeanor for a person who has been convicted of certain sexual offenses to approach, contact or communicate with a minor child in a public park or playground or knowingly be present in a child care facility or a school with specified exceptions. This could have a county jail impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See comments below relating to day care centers.

D. FISCAL COMMENTS:

On February 25, 2009, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides that with specified exceptions, certain offenders cannot be present in a child care facility or school unless they given written notice to the school or day care. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could place an additional workload on schools and day care centers that provide such supervision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Florida statutes contain restrictions on where certain sex offenders are permitted to reside. Those restrictions only apply to those who committed a qualifying offense after the effective date of the legislation creating the restriction.²⁷ The first section of the bill would prohibit certain people who have previously committed a specified sexual offense from going to a school in certain circumstances. Specifically, the provision requires a person who has committed a prior specified sexual offense to give written notice of his or her intent to be present at a school, to notify the school of their arrival and departure and to remain under the direct supervision of a school official. This provision may be challenged as a violation of the ex post facto clause of the state or federal constitution. Courts may treat this provision as if it were a requirement to "register" in which case it may be analogous to the requirements to register as a sexual offender. Thus far, courts have routinely upheld sexual offender registry requirements. See, e.g., *Smith v. Doe*, 123 S.Ct. 1140 (2003).

Alternatively, this requirement of the bill of the bill might be comparable to statutes which restrict where a sexual offender can live. Because statutes of this type are of recent origin, there is a limited amount of relevant case law nationwide and no relevant Florida appellate court caselaw. In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) *cert denied* 126 S.Ct. 757 (2005), the court considered a challenge to an Iowa statute that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or registered child care facility. The court recognized that the "restricted areas in many cities encompass the majority of the available housing in the city, thus leaving only limited areas within city limits available for sex offenders to establish a residence." *Id.* at 705. The question in an ex post fact challenge is whether the law imposes retroactive punishment for a criminal act after it has been committed. The court applied a test set forth by the United States Supreme Court in *Smith v. Doe*, 123 S.Ct. 1140 (2003) where the Supreme Court upheld a challenge to an Alaska statute requiring sex offenders to register.

²⁷ See ss. 794.065, F.S., 947.1405 and 948.30, F.S.

The 8th Circuit summarized the test to be applied as follows:

Under this test, a court must first consider whether the legislature meant the statute in question to establish 'civil' proceedings. If the legislature intended criminal punishment, then the legislative intent controls the inquiry and the law is necessarily punitive. If, however, the legislature intended its law to be civil and nonpunitive, then we must determine whether the law is nevertheless, so punitive either in purpose or in effect as to negate the State's nonpunitive intent. Only the clearest proof will transform what the legislature has denominated a civil regulatory measure into a criminal penalty.

Miller, 405 F.3d at 718. (citations and internal quotations omitted).

The court also considered the following factors that the Supreme Court described as "useful guideposts" in determining whether a law has a punitive effect:

Whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose.

Id. at 719.

The court considered each of these factors and rejected appellee's claim that the statute violated the ex post facto clause. See also, *Iowa v. Seering*, 701 N.W.2d 655 (Iowa 2005)(Iowa Supreme Court case affirming statute and rejecting ex post facto claim).

On October 1, 2009, applying the same test as that of the *Miller* court, above, the Kentucky Supreme Court held that a state law which restricts where registered sexual offenders may live would be an ex post facto punishment if it were applied to offenders who committed their offense before the effective date of the statute.²⁸ See also, *State v. Pollard*, 908 N.E. 2d 1145 (Ind. 2009)(holding that residency restriction as applied to defendant who committed offense prior to effective date of statute violated ex post facto clause).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1: Section 1 of the bill would prohibit an offender who had been convicted of a specified sexual offense against a victim under the age of 18 from being present in a child care facility or school or on the real property of a school or day care while the school is in operation unless he or she provides written notice to the principal or child care facility owner. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could have broad impact on where these offenders would be able to go without providing written notice and having a chaperone. Depending on how the phrase "while the school is in operation" is interpreted, an offender may be prohibited from going to these places, for example, without providing written notice and having a designated chaperone:

- a church that contains a day care center;
- a school parent-teacher conference;
- a school play or music program;
- a high school football game;
- an adult education program held at a high school in the evening.

²⁸ *Com. v. Baker*, 295 S.W.3d 437 (Ky. 2009)

The provisions of this section of the bill relating to schools apparently apply to any person who has been convicted of one of a list of sexual offenses, regardless of how long ago the offense was committed. By contrast, the sexual offender and sexual predator statutes only apply to offenders who have been released from sanction for their offense after a certain date. For example, the sexual offender statute applies to offenders who have been released from sanction for the qualifying offense on or after October 1, 1997. This section of the bill will limit the behavior of people who are not required to be registered as a sexual predator or sexual offender and have never had such restrictions placed on them.

Section 3: It appears that this section of statute would bar a county or municipality from adopting any residency exclusion ordinance after July 1, 2010 and would only allow ordinances passed prior to that date to be maintained if they did not exceed state law or if they were recommended by the county or city's chief law enforcement officer and upon a finding of public necessity and increased the distance exclusions to a maximum distance of 1,750 feet. Although it is somewhat unclear, this would apparently not permit ordinances to be maintained or created which applied to places not included in state law. State law only applies to schools, day care centers, parks and playgrounds. Of particular importance would be whether a county or municipality ordinance which barred residences in proximity to bus stops could be created or allowed to remain in effect. [State law includes bus stops only for the relatively few offenders who are on conditional release.]

The Broward County Sexual Offender & Sexual Predator Residence Task Force report noted that in that county, there were twenty-four city ordinances which all applied to bus stops and further found that "bus stops appear to be the most restrictive part of residence laws across the state".²⁹ As part of its recommendations, the task force stated, "[i]t is clear that bus stops diminish housing availability within buffer zones to a literal point of non-existence. We recommend that if a residential exclusion zone is passed it should not include bus stops as a prohibited venue."³⁰

It also appears that the newly created section of statute would preclude a county or municipal ordinance from applying to offenders convicted of offenses not included in state law.

Section 9: Lines 1071 and 1082 refer to the "commission". This section of statute relates to conditions of supervision that must be placed on probationers and community controllees and the reference should be to the "court" rather than the "commission".

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

²⁹ *Sexual Offender & Sexual Predator Residence Task Force*, August 25, 2009, p. 25.

³⁰ *Id.* at 35.

1 A bill to be entitled
2 An act relating to sexual offenders and predators;
3 creating s. 856.022, F.S.; prohibiting loitering or
4 prowling by certain offenders within a specified distance
5 of places where children regularly congregate; prohibiting
6 certain actions toward a child at a public park or
7 playground by certain offenders; prohibiting the presence
8 of certain offenders at or on real property comprising a
9 child care facility or pre-K through 12 school without
10 notice and supervision; providing exceptions; providing
11 penalties; amending s. 775.21, F.S.; revising and
12 providing definitions; revising provisions relating to
13 residence reporting requirements for sexual predators;
14 creating s. 775.215, F.S.; preempting certain local
15 ordinances relating to residency limitations for sexual
16 predators and offenders and providing for repeal of such
17 ordinances; providing for limited exceptions for distance
18 provisions in ordinances meeting specified requirements;
19 amending s. 943.0435, F.S.; revising provisions relating
20 to residence reporting requirements for sexual offenders;
21 amending s. 943.04352, F.S.; requiring that the probation
22 services provider search in an additional specified sex
23 offender registry for information regarding sexual
24 predators and sexual offenders when an offender is placed
25 on misdemeanor probation; amending s. 944.606, F.S.;
26 revising address reporting requirements for sexual
27 offenders; amending s. 944.607, F.S.; requiring additional
28 registration information from sex offenders who are under

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29 the supervision of the Department of Corrections but who
30 are not incarcerated; amending s. 947.1405, F.S.; revising
31 provisions relating to polygraph examinations of specified
32 conditional releasees who have committed specified sexual
33 offenses; providing additional restrictions for certain
34 conditional releasees who have committed specified sexual
35 offenses against minors under the age of 16 or have
36 similar convictions in another jurisdiction; amending s.
37 948.30, F.S.; revising provisions relating to polygraph
38 examinations of specified probationers or community
39 controllees who have committed specified sexual offenses;
40 providing additional restrictions for certain probationers
41 or community controllees who committed specified sexual
42 offenses against minors under the age of 16 or who have
43 similar convictions in another jurisdiction; amending s.
44 948.31, F.S.; deleting a requirement for diagnosis of
45 certain sexual predators and sexual offenders on community
46 control; revising provisions relating to treatment for
47 such offenders and predators; amending s. 985.481, F.S.;
48 providing additional address reporting requirements for
49 sexual offenders adjudicated delinquent; amending s.
50 985.4815, F.S.; revising provisions relating to address
51 and residence reporting requirements for sexual offenders
52 adjudicated delinquent; providing an effective date.

53

54 Be It Enacted by the Legislature of the State of Florida:

55

56 Section 1. Section 856.022, Florida Statutes, is created

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57 to read:

58 856.022 Loitering or prowling by certain offenders in
59 close proximity to children; penalty.--

60 (1) This section applies to an offender convicted of
61 committing, or attempting, soliciting, or conspiring to commit,
62 any of the criminal offenses proscribed in the following
63 statutes in this state or similar offenses in another
64 jurisdiction against a victim who was under the age of 18 at the
65 time of the offense: s. 787.01, s. 787.02, or s. 787.025(2)(c),
66 where the victim is a minor and the offender was not the
67 victim's parent or guardian; s. 794.011, excluding s.
68 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
69 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
70 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
71 985.701(1); or any similar offense committed in this state which
72 has been redesignated from a former statute number to one of
73 those listed in this subsection, if the offender has not
74 received a pardon for any felony or similar law of another
75 jurisdiction necessary for the operation of this subsection and
76 a conviction of a felony or similar law of another jurisdiction
77 necessary for the operation of this subsection has not been set
78 aside in any postconviction proceeding.

79 (2) An offender described in subsection (1) commits
80 loitering and prowling by a person convicted of a sexual offense
81 against a minor if, in committing loitering and prowling, he or
82 she was within 300 feet of a place where children regularly
83 congregate, including, but not limited to, a school, day care
84 center, playground, or park.

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85 (3) It is unlawful for an offender described in subsection
86 (1) to:

87 (a) Knowingly approach, contact, or communicate with a
88 child under 18 years of age in any public park building or on
89 real property comprising any public park or playground with
90 intent to engage in conduct of a sexual nature, or to make a
91 communication of any type containing any content of a sexual
92 nature. This paragraph applies only to an offender described in
93 subsection (1) whose offense was committed on or after July 1,
94 2010.

95 (b)1. Knowingly be present in any child care facility or
96 pre-K through 12 school or on real property comprising any child
97 care facility or pre-K through 12 school when the child care
98 facility or school is in operation unless the offender has
99 provided written notification of his or her intent to be present
100 to the school board, superintendent, principal, or child care
101 facility owner.

102 2. Fail to notify the child care facility owner or the
103 principal's office when he or she arrives and departs the child
104 care facility or school.

105 3. Fail to remain under direct supervision of a school
106 official or designated chaperone when present in the vicinity of
107 children. As used in this subparagraph, the term "school
108 official" means a principal, school resource officer, teacher or
109 any other employee of the school, the superintendent of schools,
110 a member of the school board, a child care facility owner, or a
111 child care provider.

112 (4) The offender is not in violation of subsection (3) if:

113 (a) The child care facility or school is a voting location
 114 and the offender is present for the purpose of voting during the
 115 hours designated for voting; or

116 (b) The offender is only dropping off or picking up his or
 117 her own children or grandchildren at the child care facility or
 118 school.

119 (5) Any person who violates this section commits a
 120 misdemeanor of the first degree, punishable as provided in s.
 121 775.082 or s. 775.083.

122 Section 2. Paragraph (g) of subsection (2), paragraph (c)
 123 of subsection (4), paragraph (a) of subsection (5), paragraphs
 124 (a), (f), (g), (i), and (j) of subsection (6), paragraph (a) of
 125 subsection (7), and paragraph (a) of subsection (8) of section
 126 775.21, Florida Statutes, are amended, and paragraph (1) is
 127 added to subsection (2) of that section, to read:

128 775.21 The Florida Sexual Predators Act.--

129 (2) DEFINITIONS.--As used in this section, the term:

130 (g) "Temporary residence" means a place where the person
 131 abides, lodges, or resides, including, but not limited to,
 132 vacation, business, or personal travel destinations in or out of
 133 this state, for a period of 5 or more days in the aggregate
 134 during any calendar year and which is not the person's permanent
 135 address or, for a person whose permanent residence is not in
 136 this state, a place where the person is employed, practices a
 137 vocation, or is enrolled as a student for any period of time in
 138 this state.

139 (1) "Transient residence" means a place or county where a
 140 person lives, remains, or is located for a period of 5 or more

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141 days in the aggregate during a calendar year and which is not
 142 the person's permanent or temporary address. The term includes,
 143 but is not limited to, a place where the person sleeps or seeks
 144 shelter and a location that has no specific street address.

145 (4) SEXUAL PREDATOR CRITERIA.--

146 (c) If an offender has been registered as a sexual
 147 predator by the Department of Corrections, the department, or
 148 any other law enforcement agency and if:

149 1. The court did not, for whatever reason, make a written
 150 finding at the time of sentencing that the offender was a sexual
 151 predator; or

152 2. The offender was administratively registered as a
 153 sexual predator because the Department of Corrections, the
 154 department, or any other law enforcement agency obtained
 155 information that indicated that the offender met the criteria
 156 for designation as a sexual predator based on a violation of a
 157 similar law in another jurisdiction,

158
 159 the department shall remove that offender from the department's
 160 list of sexual predators and, for an offender described under
 161 subparagraph 1., shall notify the state attorney who prosecuted
 162 the offense that met the criteria for administrative designation
 163 as a sexual predator, and, for an offender described under this
 164 paragraph, shall notify the state attorney of the county where
 165 the offender establishes or maintains a permanent, ~~or~~ temporary,
 166 or transient residence. The state attorney shall bring the
 167 matter to the court's attention in order to establish that the
 168 offender meets the criteria for designation as a sexual

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169 predator. If the court makes a written finding that the offender
 170 is a sexual predator, the offender must be designated as a
 171 sexual predator, must register or be registered as a sexual
 172 predator with the department as provided in subsection (6), and
 173 is subject to the community and public notification as provided
 174 in subsection (7). If the court does not make a written finding
 175 that the offender is a sexual predator, the offender may not be
 176 designated as a sexual predator with respect to that offense and
 177 is not required to register or be registered as a sexual
 178 predator with the department.

179 (5) SEXUAL PREDATOR DESIGNATION.--An offender is
 180 designated as a sexual predator as follows:

181 (a)1. An offender who meets the sexual predator criteria
 182 described in paragraph (4) (d) is a sexual predator, and the
 183 court shall make a written finding at the time such offender is
 184 determined to be a sexually violent predator under chapter 394
 185 that such person meets the criteria for designation as a sexual
 186 predator for purposes of this section. The clerk shall transmit
 187 a copy of the order containing the written finding to the
 188 department within 48 hours after the entry of the order;

189 2. An offender who meets the sexual predator criteria
 190 described in paragraph (4) (a) who is before the court for
 191 sentencing for a current offense committed on or after October
 192 1, 1993, is a sexual predator, and the sentencing court must
 193 make a written finding at the time of sentencing that the
 194 offender is a sexual predator, and the clerk of the court shall
 195 transmit a copy of the order containing the written finding to
 196 the department within 48 hours after the entry of the order; or

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197 3. If the Department of Corrections, the department, or
198 any other law enforcement agency obtains information which
199 indicates that an offender who establishes or maintains a
200 permanent, ~~or~~ temporary, or transient residence in this state
201 meets the sexual predator criteria described in paragraph (4)(a)
202 or paragraph (4)(d) because the offender was civilly committed
203 or committed a similar violation in another jurisdiction on or
204 after October 1, 1993, the Department of Corrections, the
205 department, or the law enforcement agency shall notify the state
206 attorney of the county where the offender establishes or
207 maintains a permanent, ~~or~~ temporary, or transient residence of
208 the offender's presence in the community. The state attorney
209 shall file a petition with the criminal division of the circuit
210 court for the purpose of holding a hearing to determine if the
211 offender's criminal record or record of civil commitment from
212 another jurisdiction meets the sexual predator criteria. If the
213 court finds that the offender meets the sexual predator criteria
214 because the offender has violated a similar law or similar laws
215 in another jurisdiction, the court shall make a written finding
216 that the offender is a sexual predator.

217
218 When the court makes a written finding that an offender is a
219 sexual predator, the court shall inform the sexual predator of
220 the registration and community and public notification
221 requirements described in this section. Within 48 hours after
222 the court designating an offender as a sexual predator, the
223 clerk of the circuit court shall transmit a copy of the court's
224 written sexual predator finding to the department. If the

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225 offender is sentenced to a term of imprisonment or supervision,
 226 a copy of the court's written sexual predator finding must be
 227 submitted to the Department of Corrections.

228 (6) REGISTRATION.--

229 (a) A sexual predator must register with the department
 230 through the sheriff's office by providing the following
 231 information to the department:

232 1. Name, social security number, age, race, sex, date of
 233 birth, height, weight, hair and eye color, photograph, address
 234 of legal residence and address of any current temporary
 235 residence, within the state or out of state, including a rural
 236 route address and a post office box, if no permanent or
 237 temporary address, any transient residence within the state,
 238 address, location or description, and dates of any current or
 239 known future temporary residence within the state or out of
 240 state, any electronic mail address and any instant message name
 241 required to be provided pursuant to subparagraph (g)4., home
 242 telephone number and any cellular telephone number, date and
 243 place of any employment, date and place of each conviction,
 244 fingerprints, and a brief description of the crime or crimes
 245 committed by the offender. A post office box shall not be
 246 provided in lieu of a physical residential address.

247 a. If the sexual predator's place of residence is a motor
 248 vehicle, trailer, mobile home, or manufactured home, as defined
 249 in chapter 320, the sexual predator shall also provide to the
 250 department written notice of the vehicle identification number;
 251 the license tag number; the registration number; and a
 252 description, including color scheme, of the motor vehicle,

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253 trailer, mobile home, or manufactured home. If a sexual
254 predator's place of residence is a vessel, live-aboard vessel,
255 or houseboat, as defined in chapter 327, the sexual predator
256 shall also provide to the department written notice of the hull
257 identification number; the manufacturer's serial number; the
258 name of the vessel, live-aboard vessel, or houseboat; the
259 registration number; and a description, including color scheme,
260 of the vessel, live-aboard vessel, or houseboat.

261 b. If the sexual predator is enrolled, employed, or
262 carrying on a vocation at an institution of higher education in
263 this state, the sexual predator shall also provide to the
264 department the name, address, and county of each institution,
265 including each campus attended, and the sexual predator's
266 enrollment or employment status. Each change in enrollment or
267 employment status shall be reported in person at the sheriff's
268 office, or the Department of Corrections if the sexual predator
269 is in the custody or control of or under the supervision of the
270 Department of Corrections, within 48 hours after any change in
271 status. The sheriff or the Department of Corrections shall
272 promptly notify each institution of the sexual predator's
273 presence and any change in the sexual predator's enrollment or
274 employment status.

275 2. Any other information determined necessary by the
276 department, including criminal and corrections records;
277 nonprivileged personnel and treatment records; and evidentiary
278 genetic markers when available.

279 (f) Within 48 hours after the registration required under
280 paragraph (a) or paragraph (e), a sexual predator who is not

281 | incarcerated and who resides in the community, including a
 282 | sexual predator under the supervision of the Department of
 283 | Corrections, shall register in person at a driver's license
 284 | office of the Department of Highway Safety and Motor Vehicles
 285 | and shall present proof of registration. At the driver's license
 286 | office the sexual predator shall:

287 | 1. If otherwise qualified, secure a Florida driver's
 288 | license, renew a Florida driver's license, or secure an
 289 | identification card. The sexual predator shall identify himself
 290 | or herself as a sexual predator who is required to comply with
 291 | this section, provide his or her place of permanent, ~~or~~
 292 | temporary, or transient residence, including a rural route
 293 | address and a post office box, and submit to the taking of a
 294 | photograph for use in issuing a driver's license, renewed
 295 | license, or identification card, and for use by the department
 296 | in maintaining current records of sexual predators. A post
 297 | office box shall not be provided in lieu of a physical
 298 | residential address. If the sexual predator's place of residence
 299 | is a motor vehicle, trailer, mobile home, or manufactured home,
 300 | as defined in chapter 320, the sexual predator shall also
 301 | provide to the Department of Highway Safety and Motor Vehicles
 302 | the vehicle identification number; the license tag number; the
 303 | registration number; and a description, including color scheme,
 304 | of the motor vehicle, trailer, mobile home, or manufactured
 305 | home. If a sexual predator's place of residence is a vessel,
 306 | live-aboard vessel, or houseboat, as defined in chapter 327, the
 307 | sexual predator shall also provide to the Department of Highway
 308 | Safety and Motor Vehicles the hull identification number; the

309 manufacturer's serial number; the name of the vessel, live-
 310 aboard vessel, or houseboat; the registration number; and a
 311 description, including color scheme, of the vessel, live-aboard
 312 vessel, or houseboat.

313 2. Pay the costs assessed by the Department of Highway
 314 Safety and Motor Vehicles for issuing or renewing a driver's
 315 license or identification card as required by this section. The
 316 driver's license or identification card issued to the sexual
 317 predator must be in compliance with s. 322.141(3).

318 3. Provide, upon request, any additional information
 319 necessary to confirm the identity of the sexual predator,
 320 including a set of fingerprints.

321 (g)1. Each time a sexual predator's driver's license or
 322 identification card is subject to renewal, and, without regard
 323 to the status of the predator's driver's license or
 324 identification card, within 48 hours after any change of the
 325 predator's residence or change in the predator's name by reason
 326 of marriage or other legal process, the predator shall report in
 327 person to a driver's license office and shall be subject to the
 328 requirements specified in paragraph (f). The Department of
 329 Highway Safety and Motor Vehicles shall forward to the
 330 department and to the Department of Corrections all photographs
 331 and information provided by sexual predators. Notwithstanding
 332 the restrictions set forth in s. 322.142, the Department of
 333 Highway Safety and Motor Vehicles is authorized to release a
 334 reproduction of a color-photograph or digital-image license to
 335 the Department of Law Enforcement for purposes of public
 336 notification of sexual predators as provided in this section.

337 2. A sexual predator who vacates a permanent, temporary,
338 or transient residence and fails to establish or maintain
339 another permanent, ~~or~~ temporary, or transient residence shall,
340 within 48 hours after vacating the permanent, temporary, or
341 transient residence, report in person to the sheriff's office of
342 the county in which he or she is located. The sexual predator
343 shall specify the date upon which he or she intends to or did
344 vacate such residence. The sexual predator must provide or
345 update all of the registration information required under
346 paragraph (a). The sexual predator must provide an address for
347 the residence or other place ~~location~~ that he or she is or will
348 be located ~~occupying~~ during the time in which he or she fails to
349 establish or maintain a permanent or temporary residence.

350 3. A sexual predator who remains at a permanent,
351 temporary, or transient residence after reporting his or her
352 intent to vacate such residence shall, within 48 hours after the
353 date upon which the predator indicated he or she would or did
354 vacate such residence, report in person to the sheriff's office
355 to which he or she reported pursuant to subparagraph 2. for the
356 purpose of reporting his or her address at such residence. When
357 the sheriff receives the report, the sheriff shall promptly
358 convey the information to the department. An offender who makes
359 a report as required under subparagraph 2. but fails to make a
360 report as required under this subparagraph commits a felony of
361 the second degree, punishable as provided in s. 775.082, s.
362 775.083, or s. 775.084.

363 4. A sexual predator must register any electronic mail
364 address or instant message name with the department prior to

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365 using such electronic mail address or instant message name on or
366 after October 1, 2007. The department shall establish an online
367 system through which sexual predators may securely access and
368 update all electronic mail address and instant message name
369 information.

370 (i) A sexual predator who intends to establish a
371 permanent, temporary, or transient residence in another state or
372 jurisdiction other than the State of Florida shall report in
373 person to the sheriff of the county of current residence within
374 48 hours before the date he or she intends to leave this state
375 to establish residence in another state or jurisdiction. The
376 sexual predator must provide to the sheriff the address,
377 municipality, county, and state of intended residence. The
378 sheriff shall promptly provide to the department the information
379 received from the sexual predator. The department shall notify
380 the statewide law enforcement agency, or a comparable agency, in
381 the intended state or jurisdiction of residence of the sexual
382 predator's intended residence. The failure of a sexual predator
383 to provide his or her intended place of residence is punishable
384 as provided in subsection (10).

385 (j) A sexual predator who indicates his or her intent to
386 establish a permanent, temporary, or transient residence ~~reside~~
387 in another state or jurisdiction other than the State of Florida
388 and later decides to remain in this state shall, within 48 hours
389 after the date upon which the sexual predator indicated he or
390 she would leave this state, report in person to the sheriff to
391 which the sexual predator reported the intended change of
392 residence, and report his or her intent to remain in this state.

393 If the sheriff is notified by the sexual predator that he or she
 394 intends to remain in this state, the sheriff shall promptly
 395 report this information to the department. A sexual predator who
 396 reports his or her intent to establish a permanent, temporary,
 397 or transient residence ~~reside~~ in another state or jurisdiction,
 398 but who remains in this state without reporting to the sheriff
 399 in the manner required by this paragraph, commits a felony of
 400 the second degree, punishable as provided in s. 775.082, s.
 401 775.083, or s. 775.084.

402 (7) COMMUNITY AND PUBLIC NOTIFICATION.--

403 (a) Law enforcement agencies must inform members of the
 404 community and the public of a sexual predator's presence. Upon
 405 notification of the presence of a sexual predator, the sheriff
 406 of the county or the chief of police of the municipality where
 407 the sexual predator establishes or maintains a permanent or
 408 temporary residence shall notify members of the community and
 409 the public of the presence of the sexual predator in a manner
 410 deemed appropriate by the sheriff or the chief of police. Within
 411 48 hours after receiving notification of the presence of a
 412 sexual predator, the sheriff of the county or the chief of
 413 police of the municipality where the sexual predator temporarily
 414 or permanently resides shall notify each licensed day care
 415 center, elementary school, middle school, and high school within
 416 a 1-mile radius of the temporary or permanent residence of the
 417 sexual predator of the presence of the sexual predator.

418 Information provided to members of the community and the public
 419 regarding a sexual predator must include:

- 420 1. The name of the sexual predator;

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421 2. A description of the sexual predator, including a
422 photograph;

423 3. The sexual predator's current permanent, temporary, and
424 transient addresses, and descriptions of registered locations
425 that have no specific street address, including the name of the
426 county or municipality if known;

427 4. The circumstances of the sexual predator's offense or
428 offenses; and

429 5. Whether the victim of the sexual predator's offense or
430 offenses was, at the time of the offense, a minor or an adult.

431

432 This paragraph does not authorize the release of the name of any
433 victim of the sexual predator.

434 (8) VERIFICATION.--The department and the Department of
435 Corrections shall implement a system for verifying the addresses
436 of sexual predators. The system must be consistent with the
437 provisions of the federal Adam Walsh Child Protection and Safety
438 Act of 2006 and any other federal standards applicable to such
439 verification or required to be met as a condition for the
440 receipt of federal funds by the state. The Department of
441 Corrections shall verify the addresses of sexual predators who
442 are not incarcerated but who reside in the community under the
443 supervision of the Department of Corrections and shall report to
444 the department any failure by a sexual predator to comply with
445 registration requirements. County and local law enforcement
446 agencies, in conjunction with the department, shall verify the
447 addresses of sexual predators who are not under the care,
448 custody, control, or supervision of the Department of

449 Corrections. Local law enforcement agencies shall report to the
 450 department any failure by a sexual predator to comply with
 451 registration requirements.

452 (a) A sexual predator must report in person each year
 453 during the month of the sexual predator's birthday and during
 454 every third month thereafter to the sheriff's office in the
 455 county in which he or she resides or is otherwise located to
 456 reregister. The sheriff's office may determine the appropriate
 457 times and days for reporting by the sexual predator, which shall
 458 be consistent with the reporting requirements of this paragraph.
 459 Reregistration shall include any changes to the following
 460 information:

461 1. Name; social security number; age; race; sex; date of
 462 birth; height; weight; hair and eye color; address of any
 463 permanent residence and address of any current temporary
 464 residence, within the state or out of state, including a rural
 465 route address and a post office box; if no permanent or
 466 temporary address, any transient residence within the state;
 467 address, location or description, and dates of any current or
 468 known future temporary residence within the state or out of
 469 state; any electronic mail address and any instant message name
 470 required to be provided pursuant to subparagraph (6)(g)4.; home
 471 telephone number and any cellular telephone number; date and
 472 place of any employment; vehicle make, model, color, and license
 473 tag number; fingerprints; and photograph. A post office box
 474 shall not be provided in lieu of a physical residential address.

475 2. If the sexual predator is enrolled, employed, or
 476 carrying on a vocation at an institution of higher education in

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477 | this state, the sexual predator shall also provide to the
 478 | department the name, address, and county of each institution,
 479 | including each campus attended, and the sexual predator's
 480 | enrollment or employment status.

481 | 3. If the sexual predator's place of residence is a motor
 482 | vehicle, trailer, mobile home, or manufactured home, as defined
 483 | in chapter 320, the sexual predator shall also provide the
 484 | vehicle identification number; the license tag number; the
 485 | registration number; and a description, including color scheme,
 486 | of the motor vehicle, trailer, mobile home, or manufactured
 487 | home. If the sexual predator's place of residence is a vessel,
 488 | live-aboard vessel, or houseboat, as defined in chapter 327, the
 489 | sexual predator shall also provide the hull identification
 490 | number; the manufacturer's serial number; the name of the
 491 | vessel, live-aboard vessel, or houseboat; the registration
 492 | number; and a description, including color scheme, of the
 493 | vessel, live-aboard vessel, or houseboat.

494 | Section 3. Section 775.215, Florida Statutes, is created
 495 | to read:

496 | 775.215. Residency exclusions for sexual offenders or
 497 | predators; local ordinances preempted.--

498 | (1) The establishment of residency exclusions applicable
 499 | to the residence of a person required to register as a sexual
 500 | offender or sexual predator is expressly preempted to the state,
 501 | and the provisions of ss. 794.065, 947.1405, and 948.30
 502 | establishing such exclusions supersede any municipal or county
 503 | ordinances imposing different exclusions.

504 | (2) (a) Any provision of an ordinance adopted by a county

505 or municipality prior to July 1, 2010, imposing residency
 506 exclusions for the residence of a person subject to the
 507 provisions of s. 794.065, s. 947.1405, or s. 948.30 in excess of
 508 the requirements of those provisions is repealed and abolished
 509 as of July 1, 2010, except to the extent an ordinance as
 510 provided in paragraph (b) is adopted prior to that date.

511 (b) A county or municipality may, upon the recommendation
 512 of its chief law enforcement officer and upon a finding of
 513 public necessity, adopt an ordinance that increases the distance
 514 exclusions for the residence of a person subject to the
 515 provisions of s. 794.065, s. 947.1405, or s. 948.30 up to a
 516 maximum distance of 1,750 feet.

517 Section 4. Paragraph (c) of subsection (1), subsection
 518 (2), paragraphs (a), (b), and (c) of subsection (4), subsections
 519 (7), (8), and (10), and paragraph (c) of subsection (14) of
 520 section 943.0435, Florida Statutes, are amended to read:

521 943.0435 Sexual offenders required to register with the
 522 department; penalty.--

523 (1) As used in this section, the term:

524 (c) "Permanent residence," and "temporary residence," and
 525 "transient residence" have the same meaning ascribed in s.
 526 775.21.

527 (2) A sexual offender shall:

528 (a) Report in person at the sheriff's office:

529 1. In the county in which the offender establishes or
 530 maintains a permanent, ~~or~~ temporary, or transient residence
 531 within 48 hours after:

532 a. Establishing permanent, ~~or~~ temporary, or transient

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533 residence in this state; or

534 b. Being released from the custody, control, or
535 supervision of the Department of Corrections or from the custody
536 of a private correctional facility; or

537 2. In the county where he or she was convicted within 48
538 hours after being convicted for a qualifying offense for
539 registration under this section if the offender is not in the
540 custody or control of, or under the supervision of, the
541 Department of Corrections, or is not in the custody of a private
542 correctional facility.

543
544 Any change in the information required to be provided pursuant
545 to paragraph (b), including, but not limited to, any change in
546 the sexual offender's permanent, ~~or~~ temporary, or transient
547 residence, name, any electronic mail address and any instant
548 message name required to be provided pursuant to paragraph
549 (4)(d), after the sexual offender reports in person at the
550 sheriff's office, shall be accomplished in the manner provided
551 in subsections (4), (7), and (8).

552 (b) Provide his or her name, date of birth, social
553 security number, race, sex, height, weight, hair and eye color,
554 tattoos or other identifying marks, occupation and place of
555 employment, address of permanent or legal residence or address
556 of any current temporary residence, within the state or ~~and~~ out
557 of state, including a rural route address and a post office box,
558 if no permanent or temporary address, any transient residence
559 within the state, address, location or description, and dates of
560 any current or known future temporary residence within the state

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561 or out of state, home telephone number and any cellular
562 telephone number, any electronic mail address and any instant
563 message name required to be provided pursuant to paragraph
564 (4)(d), date and place of each conviction, and a brief
565 description of the crime or crimes committed by the offender. A
566 post office box shall not be provided in lieu of a physical
567 residential address.

568 1. If the sexual offender's place of residence is a motor
569 vehicle, trailer, mobile home, or manufactured home, as defined
570 in chapter 320, the sexual offender shall also provide to the
571 department through the sheriff's office written notice of the
572 vehicle identification number; the license tag number; the
573 registration number; and a description, including color scheme,
574 of the motor vehicle, trailer, mobile home, or manufactured
575 home. If the sexual offender's place of residence is a vessel,
576 live-aboard vessel, or houseboat, as defined in chapter 327, the
577 sexual offender shall also provide to the department written
578 notice of the hull identification number; the manufacturer's
579 serial number; the name of the vessel, live-aboard vessel, or
580 houseboat; the registration number; and a description, including
581 color scheme, of the vessel, live-aboard vessel, or houseboat.

582 2. If the sexual offender is enrolled, employed, or
583 carrying on a vocation at an institution of higher education in
584 this state, the sexual offender shall also provide to the
585 department through the sheriff's office the name, address, and
586 county of each institution, including each campus attended, and
587 the sexual offender's enrollment or employment status. Each
588 change in enrollment or employment status shall be reported in

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589 person at the sheriff's office, within 48 hours after any change
590 in status. The sheriff shall promptly notify each institution of
591 the sexual offender's presence and any change in the sexual
592 offender's enrollment or employment status.

593

594 When a sexual offender reports at the sheriff's office, the
595 sheriff shall take a photograph and a set of fingerprints of the
596 offender and forward the photographs and fingerprints to the
597 department, along with the information provided by the sexual
598 offender. The sheriff shall promptly provide to the department
599 the information received from the sexual offender.

600 (4) (a) Each time a sexual offender's driver's license or
601 identification card is subject to renewal, and, without regard
602 to the status of the offender's driver's license or
603 identification card, within 48 hours after any change in the
604 offender's permanent, ~~or~~ temporary, or transient residence or
605 change in the offender's name by reason of marriage or other
606 legal process, the offender shall report in person to a driver's
607 license office, and shall be subject to the requirements
608 specified in subsection (3). The Department of Highway Safety
609 and Motor Vehicles shall forward to the department all
610 photographs and information provided by sexual offenders.
611 Notwithstanding the restrictions set forth in s. 322.142, the
612 Department of Highway Safety and Motor Vehicles is authorized to
613 release a reproduction of a color-photograph or digital-image
614 license to the Department of Law Enforcement for purposes of
615 public notification of sexual offenders as provided in this
616 section and ss. 943.043 and 944.606.

617 (b) A sexual offender who vacates a permanent, temporary,
 618 or transient residence and fails to establish or maintain
 619 another permanent, ~~or~~ temporary, or transient residence shall,
 620 within 48 hours after vacating the permanent, temporary, or
 621 transient residence, report in person to the sheriff's office of
 622 the county in which he or she is located. The sexual offender
 623 shall specify the date upon which he or she intends to or did
 624 vacate such residence. The sexual offender must provide or
 625 update all of the registration information required under
 626 paragraph (2)(b). The sexual offender must provide an address
 627 for the residence or other place ~~location~~ that he or she is or
 628 will be located ~~occupying~~ during the time in which he or she
 629 fails to establish or maintain a permanent or temporary
 630 residence.

631 (c) A sexual offender who remains at a permanent,
 632 temporary, or transient residence after reporting his or her
 633 intent to vacate such residence shall, within 48 hours after the
 634 date upon which the offender indicated he or she would or did
 635 vacate such residence, report in person to the agency to which
 636 he or she reported pursuant to paragraph (b) for the purpose of
 637 reporting his or her address at such residence. When the sheriff
 638 receives the report, the sheriff shall promptly convey the
 639 information to the department. An offender who makes a report as
 640 required under paragraph (b) but fails to make a report as
 641 required under this paragraph commits a felony of the second
 642 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 643 775.084.

644 (7) A sexual offender who intends to establish a

645 permanent, temporary, or transient residence in another state or
 646 jurisdiction other than the State of Florida shall report in
 647 person to the sheriff of the county of current residence within
 648 48 hours before the date he or she intends to leave this state
 649 to establish residence in another state or jurisdiction. The
 650 notification must include the address, municipality, county, and
 651 state of intended residence. The sheriff shall promptly provide
 652 to the department the information received from the sexual
 653 offender. The department shall notify the statewide law
 654 enforcement agency, or a comparable agency, in the intended
 655 state or jurisdiction of residence of the sexual offender's
 656 intended residence. The failure of a sexual offender to provide
 657 his or her intended place of residence is punishable as provided
 658 in subsection (9).

659 (8) A sexual offender who indicates his or her intent to
 660 establish a permanent, temporary, or transient residence ~~reside~~
 661 in another state or jurisdiction other than the State of Florida
 662 and later decides to remain in this state shall, within 48 hours
 663 after the date upon which the sexual offender indicated he or
 664 she would leave this state, report in person to the sheriff to
 665 which the sexual offender reported the intended change of
 666 permanent, temporary, or transient residence, and report his or
 667 her intent to remain in this state. The sheriff shall promptly
 668 report this information to the department. A sexual offender who
 669 reports his or her intent to establish a permanent, temporary,
 670 or transient residence ~~reside~~ in another state or jurisdiction
 671 but who remains in this state without reporting to the sheriff
 672 in the manner required by this subsection commits a felony of

673 the second degree, punishable as provided in s. 775.082, s.
 674 775.083, or s. 775.084.

675 (10) The department, the Department of Highway Safety and
 676 Motor Vehicles, the Department of Corrections, the Department of
 677 Juvenile Justice, any law enforcement agency in this state, and
 678 the personnel of those departments; an elected or appointed
 679 official, public employee, or school administrator; or an
 680 employee, agency, or any individual or entity acting at the
 681 request or upon the direction of any law enforcement agency is
 682 immune from civil liability for damages for good faith
 683 compliance with the requirements of this section or for the
 684 release of information under this section, and shall be presumed
 685 to have acted in good faith in compiling, recording, reporting,
 686 or releasing the information. The presumption of good faith is
 687 not overcome if a technical or clerical error is made by the
 688 department, the Department of Highway Safety and Motor Vehicles,
 689 the Department of Corrections, the Department of Juvenile
 690 Justice, the personnel of those departments, or any individual
 691 or entity acting at the request or upon the direction of any of
 692 those departments in compiling or providing information, or if
 693 information is incomplete or incorrect because a sexual offender
 694 fails to report or falsely reports his or her current place of
 695 permanent, ~~or~~ temporary, or transient residence.

696 (14)

697 (c) The sheriff's office may determine the appropriate
 698 times and days for reporting by the sexual offender, which shall
 699 be consistent with the reporting requirements of this
 700 subsection. Reregistration shall include any changes to the

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701 following information:

702 1. Name; social security number; age; race; sex; date of
703 birth; height; weight; hair and eye color; address of any
704 permanent residence and address of any current temporary
705 residence, within the state or out of state, including a rural
706 route address and a post office box; if no permanent or
707 temporary address, any transient residence within the state;
708 address, location or description, and dates of any current or
709 known future temporary residence within the state or out of
710 state; any electronic mail address and any instant message name
711 required to be provided pursuant to paragraph (4) (d); home
712 telephone number and any cellular telephone number; date and
713 place of any employment; vehicle make, model, color, and license
714 tag number; fingerprints; and photograph. A post office box
715 shall not be provided in lieu of a physical residential address.

716 2. If the sexual offender is enrolled, employed, or
717 carrying on a vocation at an institution of higher education in
718 this state, the sexual offender shall also provide to the
719 department the name, address, and county of each institution,
720 including each campus attended, and the sexual offender's
721 enrollment or employment status.

722 3. If the sexual offender's place of residence is a motor
723 vehicle, trailer, mobile home, or manufactured home, as defined
724 in chapter 320, the sexual offender shall also provide the
725 vehicle identification number; the license tag number; the
726 registration number; and a description, including color scheme,
727 of the motor vehicle, trailer, mobile home, or manufactured
728 home. If the sexual offender's place of residence is a vessel,

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729 live-aboard vessel, or houseboat, as defined in chapter 327, the
 730 sexual offender shall also provide the hull identification
 731 number; the manufacturer's serial number; the name of the
 732 vessel, live-aboard vessel, or houseboat; the registration
 733 number; and a description, including color scheme, of the
 734 vessel, live-aboard vessel or houseboat.

735 4. Any sexual offender who fails to report in person as
 736 required at the sheriff's office, or who fails to respond to any
 737 address verification correspondence from the department within 3
 738 weeks of the date of the correspondence or who fails to report
 739 electronic mail addresses or instant message names, commits a
 740 felony of the third degree, punishable as provided in s.
 741 775.082, s. 775.083, or s. 775.084.

742 Section 5. Section 943.04352, Florida Statutes, is amended
 743 to read:

744 943.04352 Search of registration information regarding
 745 sexual predators and sexual offenders required when placement on
 746 misdemeanor probation.--When the court places a defendant on
 747 misdemeanor probation pursuant to ss. 948.01 and 948.15, the
 748 public or private entity providing probation services must
 749 conduct a search of the probationer's name or other identifying
 750 information against the registration information regarding
 751 sexual predators and sexual offenders maintained by the
 752 Department of Law Enforcement under s. 943.043. The probation
 753 services provider may conduct the search using the Internet site
 754 maintained by the Department of Law Enforcement. Also, a
 755 national search must be conducted through the Dru Sjodin
 756 National Sex Offender Public Website maintained by the United

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757 States Department of Justice.

758 Section 6. Paragraph (a) of subsection (3) of section
759 944.606, Florida Statutes, is amended to read:

760 944.606 Sexual offenders; notification upon release.--

761 (3)(a) The department must provide information regarding
762 any sexual offender who is being released after serving a period
763 of incarceration for any offense, as follows:

764 1. The department must provide: the sexual offender's
765 name, any change in the offender's name by reason of marriage or
766 other legal process, and any alias, if known; the correctional
767 facility from which the sexual offender is released; the sexual
768 offender's social security number, race, sex, date of birth,
769 height, weight, and hair and eye color; address of any planned
770 permanent residence or temporary residence, within the state or
771 out of state, including a rural route address and a post office
772 box; if no permanent or temporary address, any transient
773 residence within the state; address, location or description,
774 and dates of any known future temporary residence within the
775 state or out of state; date and county of sentence and each
776 crime for which the offender was sentenced; a copy of the
777 offender's fingerprints and a digitized photograph taken within
778 60 days before release; the date of release of the sexual
779 offender; any electronic mail address and any instant message
780 name required to be provided pursuant to s. 943.0435(4)(d); and
781 home telephone number and any cellular telephone number; and the
782 offender's intended residence address, if known. The department
783 shall notify the Department of Law Enforcement if the sexual
784 offender escapes, absconds, or dies. If the sexual offender is

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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785 | in the custody of a private correctional facility, the facility
 786 | shall take the digitized photograph of the sexual offender
 787 | within 60 days before the sexual offender's release and provide
 788 | this photograph to the Department of Corrections and also place
 789 | it in the sexual offender's file. If the sexual offender is in
 790 | the custody of a local jail, the custodian of the local jail
 791 | shall register the offender within 3 business days after intake
 792 | of the offender for any reason and upon release, and shall
 793 | notify the Department of Law Enforcement of the sexual
 794 | offender's release and provide to the Department of Law
 795 | Enforcement the information specified in this paragraph and any
 796 | information specified in subparagraph 2. that the Department of
 797 | Law Enforcement requests.

798 | 2. The department may provide any other information deemed
 799 | necessary, including criminal and corrections records,
 800 | nonprivileged personnel and treatment records, when available.

801 | Section 7. Subsections (4) and (6) and paragraph (c) of
 802 | subsection (13) of section 944.607, Florida Statutes, are
 803 | amended to read:

804 | 944.607 Notification to Department of Law Enforcement of
 805 | information on sexual offenders.--

806 | (4) A sexual offender, as described in this section, who
 807 | is under the supervision of the Department of Corrections but is
 808 | not incarcerated must register with the Department of
 809 | Corrections within 3 business days after sentencing for a
 810 | registrable ~~registerable~~ offense and otherwise provide
 811 | information as required by this subsection.

812 | (a) The sexual offender shall provide his or her name;

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813 date of birth; social security number; race; sex; height;
814 weight; hair and eye color; tattoos or other identifying marks;
815 any electronic mail address and any instant message name
816 required to be provided pursuant to s. 943.0435(4)(d); ~~and~~
817 permanent or legal residence and address of temporary residence
818 within the state or out of state while the sexual offender is
819 under supervision in this state, including any rural route
820 address or post office box; if no permanent or temporary
821 address, any transient residence within the state; and address,
822 location or description, and dates of any current or known
823 future temporary residence within the state or out of state. The
824 Department of Corrections shall verify the address of each
825 sexual offender in the manner described in ss. 775.21 and
826 943.0435. The department shall report to the Department of Law
827 Enforcement any failure by a sexual predator or sexual offender
828 to comply with registration requirements.

829 (b) If the sexual offender is enrolled, employed, or
830 carrying on a vocation at an institution of higher education in
831 this state, the sexual offender shall provide the name, address,
832 and county of each institution, including each campus attended,
833 and the sexual offender's enrollment or employment status. Each
834 change in enrollment or employment status shall be reported to
835 the department within 48 hours after the change in status. The
836 Department of Corrections shall promptly notify each institution
837 of the sexual offender's presence and any change in the sexual
838 offender's enrollment or employment status.

839 (6) The information provided to the Department of Law
840 Enforcement must include:

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841 (a) The information obtained from the sexual offender
 842 under subsection (4);

843 (b) The sexual offender's most current address, ~~and~~ and place
 844 of permanent, ~~and~~ temporary, or transient residence within the
 845 state or out of state, and address, location or description, and
 846 dates of any current or known future temporary residence within
 847 the state or out of state, while the sexual offender is under
 848 supervision in this state, including the name of the county or
 849 municipality in which the offender permanently or temporarily
 850 resides, or has a transient residence, and address, location or
 851 description, and dates of any current or known future temporary
 852 residence within the state or out of state, and, if known, the
 853 intended place of permanent, ~~or~~ temporary, or transient
 854 residence, and address, location or description, and dates of
 855 any current or known future temporary residence within the state
 856 or out of state upon satisfaction of all sanctions;

857 (c) The legal status of the sexual offender and the
 858 scheduled termination date of that legal status;

859 (d) The location of, and local telephone number for, any
 860 Department of Corrections' office that is responsible for
 861 supervising the sexual offender;

862 (e) An indication of whether the victim of the offense
 863 that resulted in the offender's status as a sexual offender was
 864 a minor;

865 (f) The offense or offenses at conviction which resulted
 866 in the determination of the offender's status as a sex offender;
 867 and

868 (g) A digitized photograph of the sexual offender which

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869 must have been taken within 60 days before the offender is
870 released from the custody of the department or a private
871 correctional facility by expiration of sentence under s. 944.275
872 or must have been taken by January 1, 1998, or within 60 days
873 after the onset of the department's supervision of any sexual
874 offender who is on probation, community control, conditional
875 release, parole, provisional release, or control release or who
876 is supervised by the department under the Interstate Compact
877 Agreement for Probationers and Parolees. If the sexual offender
878 is in the custody of a private correctional facility, the
879 facility shall take a digitized photograph of the sexual
880 offender within the time period provided in this paragraph and
881 shall provide the photograph to the department.

882

883 If any information provided by the department changes during the
884 time the sexual offender is under the department's control,
885 custody, or supervision, including any change in the offender's
886 name by reason of marriage or other legal process, the
887 department shall, in a timely manner, update the information and
888 provide it to the Department of Law Enforcement in the manner
889 prescribed in subsection (2).

890 (13)

891 (c) The sheriff's office may determine the appropriate
892 times and days for reporting by the sexual offender, which shall
893 be consistent with the reporting requirements of this
894 subsection. Reregistration shall include any changes to the
895 following information:

896 1. Name; social security number; age; race; sex; date of

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897 birth; height; weight; hair and eye color; address of any
898 permanent residence and address of any current temporary
899 residence, within the state or out of state, including a rural
900 route address and a post office box; if no permanent or
901 temporary address, any transient residence; address, location or
902 description, and dates of any current or known future temporary
903 residence within the state or out of state; any electronic mail
904 address and any instant message name required to be provided
905 pursuant to s. 943.0435(4)(d); date and place of any employment;
906 vehicle make, model, color, and license tag number;
907 fingerprints; and photograph. A post office box shall not be
908 provided in lieu of a physical residential address.

909 2. If the sexual offender is enrolled, employed, or
910 carrying on a vocation at an institution of higher education in
911 this state, the sexual offender shall also provide to the
912 department the name, address, and county of each institution,
913 including each campus attended, and the sexual offender's
914 enrollment or employment status.

915 3. If the sexual offender's place of residence is a motor
916 vehicle, trailer, mobile home, or manufactured home, as defined
917 in chapter 320, the sexual offender shall also provide the
918 vehicle identification number; the license tag number; the
919 registration number; and a description, including color scheme,
920 of the motor vehicle, trailer, mobile home, or manufactured
921 home. If the sexual offender's place of residence is a vessel,
922 live-aboard vessel, or houseboat, as defined in chapter 327, the
923 sexual offender shall also provide the hull identification
924 number; the manufacturer's serial number; the name of the

925 vessel, live-aboard vessel, or houseboat; the registration
 926 number; and a description, including color scheme, of the
 927 vessel, live-aboard vessel or houseboat.

928 4. Any sexual offender who fails to report in person as
 929 required at the sheriff's office, or who fails to respond to any
 930 address verification correspondence from the department within 3
 931 weeks of the date of the correspondence, or who fails to report
 932 electronic mail addresses or instant message names, commits a
 933 felony of the third degree, punishable as provided in s.
 934 775.082, s. 775.083, or s. 775.084.

935 Section 8. Paragraph (b) of subsection (7) of section
 936 947.1405, Florida Statutes, is amended, and subsection (12) is
 937 added to that section, to read:

938 947.1405 Conditional release program.--

939 (7)

940 (b) For a releasee whose crime was committed on or after
 941 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 942 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 943 conditional release supervision, in addition to any other
 944 provision of this subsection, the commission shall impose the
 945 following additional conditions of conditional release
 946 supervision:

947 1. As part of a treatment program, participation in a
 948 minimum of one annual polygraph examination to obtain
 949 information necessary for risk management and treatment and to
 950 reduce the sex offender's denial mechanisms. The polygraph
 951 examination must be conducted by a polygrapher trained
 952 specifically in the use of the polygraph for the monitoring of

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953 sex offenders who has been authorized by the department, where
954 available, and at the expense of the releasee ~~sex offender~~. The
955 results of the examination shall be provided to the releasee's
956 probation officer and therapist and may not be used as evidence
957 in a hearing to prove that a violation of supervision has
958 occurred.

959 2. Maintenance of a driving log and a prohibition against
960 driving a motor vehicle alone without the prior approval of the
961 supervising officer.

962 3. A prohibition against obtaining or using a post office
963 box without the prior approval of the supervising officer.

964 4. If there was sexual contact, a submission to, at the
965 releasee's ~~probationer's or community controllee's~~ expense, an
966 HIV test with the results to be released to the victim or the
967 victim's parent or guardian.

968 5. Electronic monitoring of any form when ordered by the
969 commission. Any person who has been placed under supervision and
970 is electronically monitored by the department must pay the
971 department for the cost of the electronic monitoring service at
972 a rate that may not exceed the full cost of the monitoring
973 service. Funds collected under this subparagraph shall be
974 deposited into the General Revenue Fund. The department may
975 exempt a person from the payment of all or any part of the
976 electronic monitoring service cost if the department finds that
977 any of the factors listed in s. 948.09(3) exist.

978 (12) In addition to all other conditions imposed, for a
979 releasee who is subject to conditional release for a crime that
980 was committed on or after July 1, 2010, and who has been

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981 convicted at any time of committing, or attempting, soliciting,
982 or conspiring to commit, any of the criminal offenses proscribed
983 in the following statutes in this state or similar offenses in
984 another jurisdiction against a victim who was under the age of
985 18 at the time of the offense: s. 787.01, s. 787.02, or s.
986 787.025(2)(c), where the victim is a minor and the offender was
987 not the victim's parent or guardian; s. 794.011, excluding s.
988 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
989 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
990 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
991 985.701(1); or any similar offense committed in this state which
992 has been redesignated from a former statute number to one of
993 those listed in this subsection, if the offender has not
994 received a pardon for any felony or similar law of another
995 jurisdiction necessary for the operation of this subsection and
996 a conviction of a felony or similar law of another jurisdiction
997 necessary for the operation of this subsection has not been set
998 aside in any postconviction proceeding, unless at the time of
999 the crime was committed the victim was 16 or 17 years of age and
1000 the releasee was not more than 21 years of age, the commission
1001 must impose the following conditions:

1002 (a) A prohibition on visiting areas where children
1003 regularly congregate, including, but not limited to, schools,
1004 day care centers, parks, and playgrounds. The commission may
1005 also designate additional locations to protect a victim. The
1006 prohibition ordered under this paragraph does not prohibit the
1007 releasee's attendance at religious services as defined in s.
1008 775.0861.

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1009 (b) A prohibition on distributing candy or other items to
1010 children on Halloween; wearing a Santa Claus costume, or other
1011 costume to appeal to children, on or preceding Christmas;
1012 wearing an Easter Bunny costume, or other costume to appeal to
1013 children, on or preceding Easter; entertaining at children's
1014 parties; or wearing a clown costume; without prior approval from
1015 the commission.

1016 Section 9. Paragraph (a) of subsection (2) of section
1017 948.30, Florida Statutes, is amended, and subsection (4) is
1018 added to that section, to read:

1019 948.30 Additional terms and conditions of probation or
1020 community control for certain sex offenses.--Conditions imposed
1021 pursuant to this section do not require oral pronouncement at
1022 the time of sentencing and shall be considered standard
1023 conditions of probation or community control for offenders
1024 specified in this section.

1025 (2) Effective for a probationer or community controllee
1026 whose crime was committed on or after October 1, 1997, and who
1027 is placed on community control or sex offender probation for a
1028 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
1029 or s. 847.0145, in addition to any other provision of this
1030 section, the court must impose the following conditions of
1031 probation or community control:

1032 (a) As part of a treatment program, participation at least
1033 annually in polygraph examinations to obtain information
1034 necessary for risk management and treatment and to reduce the
1035 sex offender's denial mechanisms. A polygraph examination must
1036 be conducted by a polygrapher trained specifically in the use of

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1037 | the polygraph for the monitoring of sex offenders who has been
1038 | authorized by the department, where available, and shall be paid
1039 | for by the probationer or community controllee ~~sex offender~~. The
1040 | results of the polygraph examination shall be provided to the
1041 | probationer's or community controllee's probation officer and
1042 | therapist and shall not be used as evidence in court to prove
1043 | that a violation of community supervision has occurred.

1044 | (4) In addition to all other conditions imposed, for a
1045 | probationer or community controllee who is subject to
1046 | supervision for a crime that was committed on or after July 1,
1047 | 2010, and who has been convicted at any time of committing, or
1048 | attempting, soliciting, or conspiring to commit, any of the
1049 | criminal offenses proscribed in the following statutes in this
1050 | state or similar offenses in another jurisdiction against a
1051 | victim who was under the age of 18 at the time of the offense:
1052 | s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
1053 | minor and the offender was not the victim's parent or guardian;
1054 | s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
1055 | 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
1056 | 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
1057 | 847.0145; s. 985.701(1); or any similar offense committed in
1058 | this state which has been redesignated from a former statute
1059 | number to one of those listed in this subsection, if the
1060 | offender has not received a pardon for any felony or similar law
1061 | of another jurisdiction necessary for the operation of this
1062 | subsection and a conviction of a felony or similar law of
1063 | another jurisdiction necessary for the operation of this
1064 | subsection has not been set aside in any postconviction

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1065 proceeding, unless at the time the crime was committed the
 1066 victim was 16 or 17 years of age and the offender was not more
 1067 than 21 years of age, the court must impose the following
 1068 conditions:

1069 (a) A prohibition on visiting areas where children
 1070 regularly congregate, including, but not limited to, schools,
 1071 day care centers, parks, and playgrounds. The commission may
 1072 also designate additional locations to protect a victim. The
 1073 prohibition ordered under this paragraph does not prohibit the
 1074 releasee's attendance at religious services as defined in s.
 1075 775.0861.

1076 (b) A prohibition on distributing candy or other items to
 1077 children on Halloween; wearing a Santa Claus costume, or other
 1078 costume to appeal to children, on or preceding Christmas;
 1079 wearing an Easter Bunny costume, or other costume to appeal to
 1080 children, on or preceding Easter; entertaining at children's
 1081 parties; or wearing a clown costume; without prior approval from
 1082 the commission.

1083 Section 10. Section 948.31, Florida Statutes, is amended
 1084 to read:

1085 948.31 ~~Diagnosis, Evaluation, and treatment of sexual~~
 1086 predators and offenders placed on probation or community control
 1087 ~~for certain sex offenses or child exploitation.--The court shall~~
 1088 require an a diagnosis and evaluation to determine the need of a
 1089 probationer or community controlee offender in community control
 1090 for treatment. If the court determines that a need therefor is
 1091 established by the such diagnosis and evaluation process, the
 1092 court shall require sexual offender treatment outpatient

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1093 counseling as a term or condition of probation or community
 1094 control for any person who meets the criteria to be designated
 1095 as a sexual predator under s. 775.21 or to be subject to
 1096 registration as a sexual offender under s. 943.0435, s. 944.606,
 1097 or s. 944.607. was found guilty of any of the following, or
 1098 whose plea of guilty or nolo contendere to any of the following
 1099 was accepted by the court:

1100 ~~(1) Lewd or lascivious battery, lewd or lascivious~~
 1101 ~~molestation, lewd or lascivious conduct, or lewd or lascivious~~
 1102 ~~exhibition, as defined in s. 800.04 or s. 847.0135(5).~~

1103 ~~(2) Sexual battery, as defined in chapter 794, against a~~
 1104 ~~child.~~

1105 ~~(3) Exploitation of a child as provided in s. 450.151, or~~
 1106 ~~for prostitution.~~

1107
 1108 Such treatment counseling shall be required to be obtained from
 1109 a qualified practitioner as defined in s. 948.001. Treatment may
 1110 not be administered by a qualified practitioner who has been
 1111 convicted or adjudicated delinquent of committing, or
 1112 attempting, soliciting, or conspiring to commit, any offense
 1113 that is listed in s. 943.0435(1)(a)1.a.(I). The court shall
 1114 impose a restriction against contact with minors if sexual
 1115 offender treatment is recommended ~~a community mental health~~
 1116 ~~center, a recognized social service agency providing mental~~
 1117 ~~health services, or a private mental health professional or~~
 1118 ~~through other professional counseling. The evaluation and~~
 1119 recommendations plan for treatment of counseling ~~for the~~
 1120 probationer or community controlee individual shall be provided

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1121 to the court for review.

1122 Section 11. Paragraph (a) of subsection (3) of section
1123 985.481, Florida Statutes, is amended to read:

1124 985.481 Sexual offenders adjudicated delinquent;
1125 notification upon release.--

1126 (3)(a) The department must provide information regarding
1127 any sexual offender who is being released after serving a period
1128 of residential commitment under the department for any offense,
1129 as follows:

1130 1. The department must provide the sexual offender's name,
1131 any change in the offender's name by reason of marriage or other
1132 legal process, and any alias, if known; the correctional
1133 facility from which the sexual offender is released; the sexual
1134 offender's social security number, race, sex, date of birth,
1135 height, weight, and hair and eye color; address of any planned
1136 permanent residence or temporary residence, within the state or
1137 out of state, including a rural route address and a post office
1138 box; if no permanent or temporary address, any transient
1139 residence within the state; address, location or description,
1140 and dates of any known future temporary residence within the
1141 state or out of state; date and county of disposition and each
1142 crime for which there was a disposition; a copy of the
1143 offender's fingerprints and a digitized photograph taken within
1144 60 days before release; the date of release of the sexual
1145 offender; and home telephone number and any cellular telephone
1146 number; and the offender's intended residence address, if known.
1147 The department shall notify the Department of Law Enforcement if
1148 the sexual offender escapes, absconds, or dies. If the sexual

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1149 offender is in the custody of a private correctional facility,
 1150 the facility shall take the digitized photograph of the sexual
 1151 offender within 60 days before the sexual offender's release and
 1152 also place it in the sexual offender's file. If the sexual
 1153 offender is in the custody of a local jail, the custodian of the
 1154 local jail shall register the offender within 3 business days
 1155 after intake of the offender for any reason and upon release,
 1156 and shall notify the Department of Law Enforcement of the sexual
 1157 offender's release and provide to the Department of Law
 1158 Enforcement the information specified in this subparagraph and
 1159 any information specified in subparagraph 2. which the
 1160 Department of Law Enforcement requests.

1161 2. The department may provide any other information
 1162 considered necessary, including criminal and delinquency
 1163 records, when available.

1164 Section 12. Paragraph (a) of subsection (4), paragraph (a)
 1165 of subsection (6), and paragraph (b) of subsection (13) of
 1166 section 985.4815, Florida Statutes, are amended to read:

1167 985.4815 Notification to Department of Law Enforcement of
 1168 information on juvenile sexual offenders.--

1169 (4) A sexual offender, as described in this section, who
 1170 is under the supervision of the department but who is not
 1171 committed must register with the department within 3 business
 1172 days after adjudication and disposition for a registrable
 1173 offense and otherwise provide information as required by this
 1174 subsection.

1175 (a) The sexual offender shall provide his or her name;
 1176 date of birth; social security number; race; sex; height;

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1177 weight; hair and eye color; tattoos or other identifying marks;
 1178 ~~and~~ permanent or legal residence and address of temporary
 1179 residence within the state or out of state while the sexual
 1180 offender is in the care or custody or under the jurisdiction or
 1181 supervision of the department in this state, including any rural
 1182 route address or post office box; if no permanent or temporary
 1183 address, any transient residence; address, location or
 1184 description, and dates of any current or known future temporary
 1185 residence within the state or out of state;~~7~~ and the name and
 1186 address of each school attended. The department shall verify the
 1187 address of each sexual offender and shall report to the
 1188 Department of Law Enforcement any failure by a sexual offender
 1189 to comply with registration requirements.

1190 (6) (a) The information provided to the Department of Law
 1191 Enforcement must include the following:

1192 1. The information obtained from the sexual offender under
 1193 subsection (4).

1194 2. The sexual offender's most current address and place of
 1195 permanent, ~~or~~ temporary, or transient residence within the state
 1196 or out of state, and address, location or description, and dates
 1197 of any current or known future temporary residence within the
 1198 state or out of state, while the sexual offender is in the care
 1199 or custody or under the jurisdiction or supervision of the
 1200 department in this state, including the name of the county or
 1201 municipality in which the offender permanently or temporarily
 1202 resides, or has a transient residence, and address, location or
 1203 description, and dates of any current or known future temporary
 1204 residence within the state or out of state; and, if known, the

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1205 intended place of permanent, ~~or~~ temporary, or transient
1206 residence, and address, location or description, and dates of
1207 any current or known future temporary residence within the state
1208 or out of state upon satisfaction of all sanctions.

1209 3. The legal status of the sexual offender and the
1210 scheduled termination date of that legal status.

1211 4. The location of, and local telephone number for, any
1212 department office that is responsible for supervising the sexual
1213 offender.

1214 5. An indication of whether the victim of the offense that
1215 resulted in the offender's status as a sexual offender was a
1216 minor.

1217 6. The offense or offenses at adjudication and disposition
1218 that resulted in the determination of the offender's status as a
1219 sex offender.

1220 7. A digitized photograph of the sexual offender, which
1221 must have been taken within 60 days before the offender was
1222 released from the custody of the department or a private
1223 correctional facility by expiration of sentence under s.
1224 944.275, or within 60 days after the onset of the department's
1225 supervision of any sexual offender who is on probation,
1226 postcommitment probation, residential commitment, nonresidential
1227 commitment, licensed child-caring commitment, community control,
1228 conditional release, parole, provisional release, or control
1229 release or who is supervised by the department under the
1230 Interstate Compact Agreement for Probationers and Parolees. If
1231 the sexual offender is in the custody of a private correctional
1232 facility, the facility shall take a digitized photograph of the

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1233 sexual offender within the time period provided in this
 1234 subparagraph and shall provide the photograph to the department.

1235 (13)

1236 (b) The sheriff's office may determine the appropriate
 1237 times and days for reporting by the sexual offender, which shall
 1238 be consistent with the reporting requirements of this
 1239 subsection. Reregistration shall include any changes to the
 1240 following information:

1241 1. Name; social security number; age; race; sex; date of
 1242 birth; height; weight; hair and eye color; address of any
 1243 permanent residence and address of any current temporary
 1244 residence, within the state or out of state, including a rural
 1245 route address and a post office box; if no permanent or
 1246 temporary address, any transient residence; address, location or
 1247 description, and dates of any current or known future temporary
 1248 residence within the state or out of state; name and address of
 1249 each school attended; date and place of any employment; vehicle
 1250 make, model, color, and license tag number; fingerprints; and
 1251 photograph. A post office box shall not be provided in lieu of a
 1252 physical residential address.

1253 2. If the sexual offender is enrolled, employed, or
 1254 carrying on a vocation at an institution of higher education in
 1255 this state, the sexual offender shall also provide to the
 1256 department the name, address, and county of each institution,
 1257 including each campus attended, and the sexual offender's
 1258 enrollment or employment status.

1259 3. If the sexual offender's place of residence is a motor
 1260 vehicle, trailer, mobile home, or manufactured home, as defined

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1261 in chapter 320, the sexual offender shall also provide the
1262 vehicle identification number; the license tag number; the
1263 registration number; and a description, including color scheme,
1264 of the motor vehicle, trailer, mobile home, or manufactured
1265 home. If the sexual offender's place of residence is a vessel,
1266 live-aboard vessel, or houseboat, as defined in chapter 327, the
1267 sexual offender shall also provide the hull identification
1268 number; the manufacturer's serial number; the name of the
1269 vessel, live-aboard vessel, or houseboat; the registration
1270 number; and a description, including color scheme, of the
1271 vessel, live-aboard vessel, or houseboat.

1272 4. Any sexual offender who fails to report in person as
1273 required at the sheriff's office, or who fails to respond to any
1274 address verification correspondence from the department within 3
1275 weeks after the date of the correspondence, commits a felony of
1276 the third degree, punishable as provided in ss. 775.082,
1277 775.083, and 775.084.

1278 Section 13. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 Threats

SPONSOR(S): Adkins and others

TIED BILLS: IDEN./SIM. BILLS: SB 860

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol	TK Cunningham <i>JK</i>
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 836.10, F.S., provides that a person commits a second degree felony if the person writes and sends a letter or inscribed communication containing a threat to injure or kill the person to whom the letter or communication is addressed, or a family member of the person to whom the letter or communication is sent. The letter may be signed or sent anonymously. The statute does not specifically include letters or communications written, composed, or sent by *electronic* means.

The bill adds "threats sent through electronic or other means" to the existing statute. Any threats sent in this manner would be punishable by a second degree felony.

The bill also provides that a person who communicates or causes to be communicated orally, in writing, or through the use of electronic or other means a threat to do physical harm to any person or property of another in the course of committing an act of domestic violence commits a second degree misdemeanor.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 836.10, F.S., provides that a person commits a second degree felony¹ if the person writes and sends a letter or inscribed communication containing a threat to injure or kill the person to whom the letter or communication is addressed, or a family member of the person to whom the letter or communication is sent. The letter or communication may be signed or sent anonymously.

The statute does not specifically include letters or communications written, composed, or sent by *electronic* means.

Proposed Changes

The bill amends s. 836.10, F.S., to add "threats sent through electronic or other means" to the existing statute. Any threats sent in this manner would be punishable by a second degree felony.

The bill also provides that a person who communicates or causes to be communicated orally, in writing, or through the use of electronic or other means a threat to do physical harm to the person or property of another in the course of committing an act of domestic violence² commits a second degree misdemeanor³.

B. SECTION DIRECTORY:

Section 1: Amends s. 836.10, F.S., relating to written threats to kill or do bodily injury; punishment.

Section 2: Provides an effective date of October 1, 2010.

¹ A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

² Domestic violence as referenced in s. 741.28, F.S. means "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Sections 775.082, 775.083, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet met to determine any impact this bill might have.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

"Domestic violence" as referenced in s. 741.28, F.S., means "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 784.011, F.S., defines "assault" as "an intentional, unlawful threat by word or act to do violence" to a person. The domestic violence statute currently provides a penalty for threats made against a person.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to threats; amending s. 836.10, F.S.;
 3 prohibiting the communication of a threat to unlawfully do
 4 physical harm to the person or property of another in the
 5 course of committing an act of domestic violence;
 6 providing criminal penalties; revising provisions relating
 7 to the sending of or procuring the sending of letters or
 8 inscribed communications containing certain threats of
 9 death or bodily injury; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Section 836.10, Florida Statutes, is amended to
 14 read:

15 836.10 ~~Written Threats to kill or do bodily injury;~~
 16 ~~punishment.--~~

17 (1) Except as provided in subsection (2), any person who
 18 communicates or causes to be communicated orally, in writing, or
 19 through the use of electronic or other means a threat to
 20 unlawfully do physical harm to the person or property of another
 21 in the course of committing an act of domestic violence, as
 22 defined in s. 741.28, commits a misdemeanor of the second
 23 degree, punishable as provided in s. 775.082 or s. 775.083.

24 (2) If Any person who writes or composes and also sends or
 25 procures the sending of any letter or inscribed communication in
 26 writing, or using electronic or other means, so written or
 27 composed, whether such letter or communication be signed or
 28 anonymous, to any person, containing a threat to kill or to

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29 | unlawfully do bodily injury to the person to whom such letter or
30 | communication is sent, or a threat to kill or unlawfully do
31 | bodily injury to any member of the family of the person to whom
32 | such letter or communication is sent commits, ~~the person so~~
33 | ~~writing or composing and so sending or procuring the sending of~~
34 | ~~such letter or communication, shall be guilty of a felony of the~~
35 | second degree, punishable as provided in s. 775.082, s. 775.083,
36 | or s. 775.084.

37 | Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 319 Medical Expenses of Inmates Paid by a County or Municipality
SPONSOR(S): Hooper and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham KC
2) Military & Local Affairs Policy Committee			
3) Health Care Regulation Policy Committee			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

This bill would allow a county or municipality to pay medical costs of a person who has been arrested at Medicaid rates if no formal written agreement exists between the county or municipality and the healthcare provider.

Medical costs include medical care, treatment, hospitalization, and transportation.

This bill is estimated to have a positive fiscal impact on local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pre-trial detainees have a constitutional right to reasonable and adequate nourishment and medical care,¹ but the cost of the medical care is the primary responsibility of the person receiving the medical care.² A medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation for a person ill, wounded, or otherwise injured during or at the time of arrest for any violation of state law or a county or municipal ordinance from first, insurance; second, from the person receiving medical care; and finally from a financial settlement for the medical costs.³

When reimbursement from these sources is unavailable, the cost of medical care shall be paid from the general fund of the county in which the person was arrested. If the arrest was for violation of a municipal ordinance then the municipality shall pay the medical service provider.⁴ Section 951.032, F.S., articulates the local government's rights for reimbursement from the person seeking medical attention.⁵

The injury or illness need not be caused by the arrest.⁶ The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency. The rates medical service providers can charge local governments are not capped.⁷ At least one Florida appellate court has held that the costs of medical services are not among the costs covered by the constitutional

¹ *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997).

² Section 901.35, F.S.

³ *Id.*

⁴ *Id.*

⁵ See *Williams v. Ergle*, 698 So.2d 1294, (5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).

⁶ See *North Brevard County Hospital District v. Brevard County Bd. of County Commissioners*, 899 So.2d 1200, 1202-03 (Fla. 5th DCA 2005) ("One cannot fault Brevard County or the trial court in its attempt to circumvent section 901.35. The implications of the statute can be financially devastating to a local government in view of the ever increasing cost of medical care, especially when the Legislature has not placed a cap on the liability of government.") (citing Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004)); Op. Atty. Gen. 85-6, Feb. 4, 1985).

⁷ Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).

provision that prohibits compelling persons charged with a crime to pay costs before a judgment of conviction has become final.⁸

Medicaid Rates

Pursuant to s. 409.908, F.S., reimbursement for Medicaid providers varies by type of provider. Medicaid provider rates are set forth in the Florida Agency for Health Care Administration's rules, policy manuals, and Medicaid provider handbooks.⁹ Medicaid provider payment methodology includes: fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding, and other methods the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Medicaid reimbursement is subject to any limitations or directions provided for the General Appropriations Act (GAA).

Proposed Changes

This bill would allow a county or municipality to pay medical costs of a person who has been arrested at Medicaid rates if no formal written agreement exists between the county or municipality and the healthcare provider.

Medical costs include medical care, treatment, hospitalization, and transportation.

B. SECTION DIRECTORY:

Section 1. Amends s. 901.35, F.S., relating to financial responsibility for medical expenses.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill would act as a cost savings measure for counties and municipalities by capping the cost of medical services provided to persons ill, wounded, or otherwise injured during or at the time of arrest at the state's Medicaid rate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrested parties when the person receiving the services cannot

⁸ *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997) (citing Art. I, s. 19, Fla. Const).

⁹ See AGENCY FOR HEALTH CARE ADMINISTRATION, FEE SCHEDULES,

http://portal.flmmis.com/FLPublic/Provider_ProviderSupport/Provider_ProviderSupport_FeeSchedules/tabId/44/Default.aspx;

http://ahca.myflorida.com/Medicaid/cost_reim/index.shtml.

provide for payment of the costs and when the provider does not have a formal written agreement with the county or municipality in which the person was arrested.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to medical expenses of inmates paid by a
 3 county or municipality; amending s. 901.35, F.S.;
 4 requiring that payments made by a county or municipality
 5 to a provider for certain services for an arrested person
 6 be made at the state's Medicaid rate; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (2) of section 901.35, Florida
 12 Statutes, is amended to read:

13 901.35 Financial responsibility for medical expenses.--

14 (2) Upon a showing that reimbursement from the sources
 15 listed in subsection (1) is not available, the costs of medical
 16 care, treatment, hospitalization, and transportation shall be
 17 paid:

18 (a) From the general fund of the county in which the
 19 person was arrested, if the arrest was for violation of a state
 20 law or county ordinance; or

21 (b) From the municipal general fund, if the arrest was for
 22 violation of a municipal ordinance.

23
 24 The responsibility of a county or municipality to pay for
 25 ~~payment~~ of such medical costs shall exist only until such time
 26 as an arrested person is released from the custody of the
 27 arresting agency. Absent a formal written agreement between a
 28 county or municipality and a provider, any payments made by the

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29 county or municipality under this section to the provider for
30 medical care, treatment, hospitalization, and transportation of
31 an arrested person shall be made at the state's Medicaid rate
32 for such services.

33 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429
SPONSOR(S): Fetterman
TIED BILLS:

Sexual Offenses Involving the Internet

IDEN./SIM. BILLS: SB 932

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Cunningham <i>ll</i>	Cunningham <i>ll</i>
2) Policy Council			
3) Criminal & Civil Justice Appropriations Committee			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

Section 948.30(1)(g), F.S., currently prohibits persons convicted of certain sexual offenses *who are on some form of community supervision* (i.e., probation, community control, etc.) from accessing the Internet.

There are no statutes that prohibit persons who have been convicted of a crime *and who are not on community supervision* from accessing the Internet. However, Florida law does require sexual offenders to register their e-mail addresses and instant message names with the Florida Department of Law Enforcement (FDLE) prior to using such address or name.

HB 429 makes it a 3rd degree felony for anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense, to:

- Maintain, contract for, or access in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintain, contract for, or access in any way a wireless Internet connection in any location for any purpose.

The bill provides an exception by permitting the above-described persons to maintain, contract for, or access an Internet connection for the sole purpose of or requirements for employment. The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the impact of the bill could potentially be significant. See Fiscal Section for additional information.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Law

Laws Pertaining to Individuals No Longer Under Supervision

Currently, Florida law does not prohibit individuals *who are not on any type of community supervision* (i.e., probation, community control, etc.) from accessing the Internet. Florida law does however, require all sexual offenders, even those no longer under any form of supervision, to register their e-mail addresses¹ and instant message names² with the Florida Department of Law Enforcement (FDLE) prior to using such address or name.³

Laws Pertaining to Individuals Currently Under Supervision

Florida law does prohibit certain individuals *who are on community supervision* from accessing the Internet. Specifically, s. 948.30(1)(h), F.S., requires courts to impose a condition of supervision prohibiting probationers and community controllees whose crime is committed on or after July 1, 2005, and who are placed under supervision for specified sexual offenses⁴, from accessing the Internet or other computer services until the offender's sex offender treatment program⁵, after a risk assessment is completed, approves and implements a safety plan for such access.⁶ This statute is mandatory in that it *requires* courts to impose the condition on offenders who meet the above criteria.

It should be noted that courts have the discretion to impose *any* condition of supervision on *any* type of offender if the court deems such condition proper.⁷ Thus, even if an offender does not meet the criteria

¹ "Electronic mail address" is defined in accordance with s. 668.602, F.S., as "a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered." See ss. 775.21, 943.0435 and 944.607, F.S.

² "Instant message name" is defined as "an identifier that allows a person to communicate in real time with another person using the Internet." See ss. 775.21, 943.0435 and 944.607, F.S.

³ See generally, ss. 775.21, 943.0435 and 944.607, F.S., which require sexual offenders to register specified information with law enforcement.

⁴ Chapter 794 (sexual battery), s. 800.04 (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071 (sexual performance by a child), s. 847.0135(5) (lewd or lascivious exhibition using a computer), or s. 847.0145, F.S. (selling or buying of minors).

⁵ Section 948.30(1)(c), F.S., requires courts to impose a condition requiring probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135, or s. 847.0145, F.S., to participate in and successfully complete a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders.

⁶ Identical language is contained in s. 947.14.05, F.S., which pertains to conditional releasees.

⁷ See s. 948.03(2), F.S.

contained in s. 948.30(1)(h), F.S., a judge could impose a condition of probation prohibiting or limiting an offender's access to the Internet so long as the court deemed it proper.

Other State Laws

Aside from Florida, other states have statutes that prohibit or limit one's use of the Internet.⁸ The majority of these statutes only apply to individuals convicted of certain sexual offenses who are under some form of community supervision.⁹ However, as described below, there are a handful of states that have enacted legislation that limit or prohibit a person's access to the Internet, even when the person is no longer under supervision.

Nebraska

In 2009, Nebraska enacted a law making it a Class I misdemeanor for a registered sex offender who is convicted of certain offenses to knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service.¹⁰

This statute was recently challenged and on December 30, 2009, the court preliminarily enjoined the State of Nebraska from enforcing it. See "Constitutional Issues" for further discussion.

New Jersey

New Jersey requires courts to impose the following conditions when sentencing registered sexual offenders and offenders sentenced to lifetime supervision where there has been a finding that a computer or other device with Internet capability was used to facilitate the commission of the crime:

- A prohibition on accessing or using a computer or any other device with Internet capability without prior written approval of the court. Persons on probation or parole may use a computer or any other device with Internet capability in connection with that person's employment or search for employment with the prior approval of the person's probation or parole officer.
- A requirement that the person submit to periodic unannounced examinations of the person's computer or any other device with Internet capability by a probation officer, parole officer, law enforcement officer, or computer technology specialist.
- A requirement that the person submit to the installation, at the person's expense, of hardware or software systems to monitor the person's Internet use.
- A requirement that the person submit to any other appropriate restrictions concerning the persons' use or access of a computer or any other device with Internet capability.¹¹

Persons who violate the above conditions commit a crime of the fourth degree.¹² It should be noted that these conditions apply to qualifying offenders who are on community supervision as well as to those no longer on community supervision.

North Carolina

North Carolina prohibits registered sexual offenders from accessing commercial social networking websites where the offender knows that the site permits minor children to become members, or to create or maintain personal web pages.¹³ Sexual offenders who violate this provision commit a felony.¹⁴ This provision applies to all registered sexual offenders, not just those on community supervision.

⁸ See, e.g., 46-18-207, Montana Code; 176A.410 and 176A.413, Nevada Revised Statutes; s. 65.10, Penal Laws of New York; 12.1-32-07, North Dakota Century Code; 730 ILCS 5/3-3-7, Illinois Compiled Statutes.

⁹ See

¹⁰ See 28-322.05, Nebraska Revised Statute, effective January 1, 2010. The statute specifies that any second or subsequent conviction of this section is a Class IIIA felony.

¹¹ See 2C:43-6.6, New Jersey Statutes, effective February, 2007.

¹² Id.

¹³ See s. 14-202.5, North Carolina General Statutes, effective December 1, 2008.

¹⁴ Id.

Effect of the Bill

HB 429 makes it a 3rd degree felony¹⁵ for anyone convicted of an offense contained in Chapters 794¹⁶, 800¹⁷, 827¹⁸, or 847¹⁹, F.S., and who used the Internet in the commission of such offense to:

- Maintain, contract for, or access in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintain, contract for, or access in any way a wireless Internet connection in any location for any purpose.

The bill provides an exception by permitting the above-described persons to maintain, contract for, or access an Internet connection for the sole purpose of or requirements for employment.

The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision.

B. SECTION DIRECTORY:

Section 1. Creates s. 794.067, F.S., relating to persons convicted of certain offenses; prohibition on Internet access.

Section 2. This bill takes effect on October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, this bill makes it a 3rd degree felony for anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense to maintain, contract for, or access the Internet. The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision. No data exist to indicate how many individuals have been convicted of the above offenses where commission of the offense involved the use of the Internet. However, the impact of the bill could be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

¹⁶ Chapter 794, F.S., contains offenses related to sexual battery.

¹⁷ Chapter 800, F.S., contains offenses related to lewd and lascivious behavior and indecent exposure.

¹⁸ Chapter 827, F.S., contains offenses related to child abuse.

¹⁹ Chapter 847, F.S., contains offenses related to obscenity.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense to maintain, contract for, or access the Internet. Internet providers may see a decline in subscribers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Currently, Florida caselaw is silent as to whether prohibiting persons who are no longer under supervision from accessing the Internet raises constitutional concerns. However, caselaw from other states provide guidance.

As noted above, the State of Nebraska recently enacted a statute making it a Class I misdemeanor for a registered sex offender who is convicted of certain offenses to knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service.

The statute was to go into effect on January 1, 2010. However, prior to taking effect, the statute was challenged and on December 30, 2009, the United States District Court for the District of Nebraska preliminarily enjoined the State of Nebraska from enforcing it. In its opinion, the court stated "there are serious First Amendment²⁰ issues raised by Nebraska's attempt to prohibit offenders from using Internet sites when those offenders have served their sentences and are no longer under criminal law supervision."²¹

The court also stated that the Internet access restriction was "onerous" and was "clearly punishment."²² Although not specifically addressed by the court, imposing such restrictions on those who have completed their sentences and are no longer on any form of supervision could raise double jeopardy²³ concerns

Of note is that Nebraska's statute prohibited persons from using certain social networking web sites, instant messaging, or chat room services – it did not prohibit a person from accessing the Internet altogether.

²⁰ The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate.

²¹ *John Doe, et. al., v. Nebraska*, 2009 WL 5184328 (USDS – D. Ne, 2009).

²² *Id.*

²³ The Double Jeopardy Clause of the United States Constitution's Fifth Amendment prohibits the imposition of multiple punishments for the same offense in a single proceeding. The purpose of this prohibition is to ensure that sentencing courts do not exceed, by the device of multiple punishments, the limits prescribed by the legislative branch of government, in which lies the substantive power to define crimes and prescribe punishments. *Jones v. Thomas*, 491 U.S. 376 (1989).

The bill is very similar to the Nebraska statute in that it makes it a crime for anyone convicted of specified offenses, and who used the Internet in the commission of such offenses, to maintain, contract for, or access the Internet. The bill applies to persons who are no longer under any form of supervision and prohibits Internet access completely (with the exception of access related to employment). As such, the bill raises First Amendment and Double Jeopardy concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill prohibits certain offenders from:

- Maintaining, contracting for, or accessing in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintaining, contracting for, or accessing in any way a wireless Internet connection in any location for any purpose.

As drafted, an offender would be permitted to maintain, contract for, or access and Internet connection (hardwire connection) in any location outside of the offender's home, residence, or principal place of abode (library, etc.).

2. The bill prohibits certain offenders from *maintaining* an Internet connection in his or her home. This could be interpreted to preclude an offender from living with any person who owned or possessed a device that accessed the Internet (family members, roommates, etc).
3. Computers are no longer the only type of device that are capable of accessing the Internet. Advances in technology have made cell phones, televisions, video game systems, digital music players, etc., capable of accessing the Internet. These devices are oftentimes capable of accessing the Internet even if the person who owns the device has not specifically or contracted for an Internet service. As such, this bill could be interpreted to preclude offenders from possessing such devices.
4. The bill's prohibitions apply to persons convicted of specified crimes who used the Internet to commit those crimes. It is unclear who is responsible for determining whether a person "used the Internet" in committing one of the specified crimes.
5. The bill provides an exception to the Internet access prohibition by permitting access for the sole purpose of or requirements for employment. The bill does not provide such an exception for any other purpose (education, application for public benefits, etc.).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexual offenses involving the Internet;
 3 creating s. 794.067, F.S.; prohibiting persons convicted
 4 of certain sexual offenses involving the Internet from
 5 accessing the Internet or maintaining or contracting for
 6 access to the Internet; providing an employment exception;
 7 providing criminal penalties; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 794.067, Florida Statutes, is created
 12 to read:

13 794.067 Persons convicted of certain offenses; prohibition
 14 on Internet access.-

15 (1) (a) Except as provided in paragraph (b), a person who
 16 is convicted of or who pleads guilty or nolo contendere to,
 17 regardless of adjudication, any violation of this chapter,
 18 chapter 800, chapter 827, or chapter 847 who used the Internet
 19 in the commission of that violation shall be prohibited from the
 20 following:

21 1. Maintaining, contracting for, or accessing in any way
 22 an Internet connection in his or her home, residence, or
 23 principal place of abode.

24 2. Maintaining, contracting for, or accessing in any way a
 25 wireless Internet connection in any location for any purpose.

26 (b) A person subject to paragraph (a) is not prohibited
 27 from maintaining, contracting for, or accessing an Internet

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28 connection for the sole purpose of or requirements for his or
29 her employment.

30 (2) A person who violates this section commits a felony of
31 the third degree, punishable as provided in s. 775.082, s.
32 775.083, or s. 775.084.

33 Section 2. This act shall take effect October 1, 2010.