



Criminal Justice Subcommittee

January 31, 2012

12:30 PM

404 HOB

REVISED

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 1/27/2012 4:27:36PM)

Amended(1)

Criminal Justice Subcommittee

Start Date and Time: Tuesday, January 31, 2012 12:30 pm
End Date and Time: Tuesday, January 31, 2012 03:00 pm
Location: 404 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 5 Parole for Juvenile Offenders by Weinstein
HB 137 Offenses Against Unborn Children by Ahern, Trujillo
HB 455 Criminal Offenders by Glorioso
HB 497 Juvenile Expunction by Porth
HB 947 Possession of a Firearm or Destructive Device During Commission of an Offense by Boyd
HB 1045 Mental Health by Schwartz
HB 1097 Sexually Violent Predators by Kreegel
HB 1099 Stalking and Aggravated Stalking by Plakon
CS/HB 1143 Licensing of Health Care Practitioners by Health & Human Services Quality Subcommittee,
Costello
HB 1187 Sentencing Alternatives by Perry
HB 1331 Property Fraud by Wood
HB 1385 Child Pornography by Trujillo

NOTICE FINALIZED on 01/27/2012 16:27 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 Parole for Juvenile Offenders
SPONSOR(S): Weinstein and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>JK</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. 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. Florida abolished parole in 1995.

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. The Court further held that states must give juvenile non-homicide offenders sentenced to life without parole a meaningful opportunity to obtain release.

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill may have a positive but indeterminate fiscal impact. See "fiscal section."

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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). 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 reports that currently there are 5,360 Florida inmates still eligible for parole consideration and about 439 parolees under supervision in the community.²

Graham v. Florida

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution³ prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.⁴ The case was *Graham v. Florida*, which originated from crimes committed in Jacksonville.⁵ The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.⁶

Post-Graham Decision

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁷
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.⁸
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.⁹

In addition to resentencing hearings, juvenile offenders are appealing lengthy prison sentences as a violation of the *Graham* decision on the grounds that they effectively constitute a life sentence. Two

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

²Florida Parole Commission. 2012 Analysis of HB 5.

³The 8th Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

⁴*Graham v. Florida*, 130 S.Ct. 2011 (2010).

⁵*Id.*

⁶*Id.*

⁷"Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on January 24, 2012).

⁸"Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2012).

⁹"Teenage rapist Jose Walle resentenced to 65 years in prison," November 18, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2012).

recent Florida 1st District Court of Appeal cases have held that a 70-year and 50-year prison sentence were not the functional equivalent of a life sentence for the purposes of *Graham*.¹⁰

Effect of the Bill

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill defines:

- “Juvenile offender” as an offender who was less than 18 years of age at the time the nonhomicide offense was committed.
- “Nonhomicide offense” as an offense that did not result in the death of a human being.

The bill requires the Parole Commission to conduct an initial eligibility interview with the juvenile offender to determine whether he or she has demonstrated maturity and reform while in the custody of the Department of Corrections to justify granting parole. The initial eligibility interview may only occur after the juvenile has served 25 years of incarceration for the offense for which parole is sought. The bill also provides that the initial eligibility interview and any subsequent eligibility interview may occur only if the juvenile offender has received no approved disciplinary reports for at least 3 years prior to the scheduled eligibility interview.

In determining whether the juvenile offender has demonstrated maturity and reform and whether he or she should be granted parole, the bill requires the commission to consider all of the following:

- The wishes of the victim or the opinions of the victim's next of kin.
- Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person.
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.
- Whether the juvenile offender, while in the custody of the department, 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.
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program.
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense.
- The results of any mental health assessment or evaluation of the juvenile offender.

The bill provides that if the juvenile offender is not granted parole after the initial eligibility interview, he or she is eligible for a reinterview 7 years after the date of the denial of the grant of parole and every 7 years thereafter.

B. SECTION DIRECTORY:

Section 1. Cites the act as the “Graham Compliance 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 the act shall take effect upon becoming a law.

¹⁰ See *Gridine v. State*, 2011 WL 6849649 (Fla. App. 1st DCA 2011); *Thomas v. State*, 2011 WL 6847814 (Fla. App. 1st DCA 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Department of Corrections (DOC) reports that any fiscal impact would be positive but indeterminate because any releases resulting from this bill will be at the discretion of the Parole Commission.¹¹ In addition, the pool of inmates that might be impacted by the bill indicates that the effect on DOC will be negligible.¹² DOC states that there are currently 219 inmates in custody who meet the age and life sentence criteria for consideration under the bill. Of these, 10 have served 25 years and another 2 are within one year of serving 25 years. Of these 12, only 5 meet the criteria of no disciplinary report within 3 years.¹³

The Parole Commission reports that the fiscal impact would be indeterminate because the target population of juvenile offenders is so small.¹⁴ While the Parole Commission anticipates a workload increase from reviewing existing and future cases, it does not foresee that the number of adolescent offenders eligible for parole under the bill would be significant enough to warrant requiring additional staff at this time.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

¹¹ Department of Corrections. 2012 Analysis of HB 5.

¹² *Id.*

¹³ *Id.*

¹⁴ Florida Parole Commission. 2012 Analysis of HB 5.

¹⁵ *Id.*

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to parole for juvenile offenders;
 providing a short title; amending s. 947.16, F.S.;
 providing definitions; providing that a juvenile
 offender who was less than 18 years of age at the time
 of commission of a nonhomicide offense and who is
 sentenced to life imprisonment is eligible for parole
 if the offender has been incarcerated for a minimum
 period; requiring an initial eligibility interview to
 determine whether the juvenile offender has
 demonstrated maturity and reform for parole; providing
 criteria to determine maturity and reform; providing
 eligibility for a reinterview after a specified period
 for juvenile offenders denied parole; providing an
 effective date.

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

Section 1. This act may be cited as the "Graham Compliance 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; juvenile offender eligibility.-

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

1. "Juvenile offender" means an offender who was less than

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29 18 years of age at the time the nonhomicide offense was
30 committed.

31 2. "Nonhomicide offense" means an offense that did not
32 result in the death of a human being.

33 (b) Notwithstanding subsection (1) or any other provision
34 of law to the contrary, a juvenile offender who is sentenced to
35 life imprisonment for a nonhomicide offense may be eligible for
36 parole as provided in this subsection.

37 (c) Before a juvenile offender may be granted parole under
38 this subsection, she or he must have an initial eligibility
39 interview to determine whether she or he has demonstrated
40 maturity and reform while in the custody of the department to
41 justify granting parole. The initial eligibility interview may
42 occur only after the juvenile offender has served 25 years of
43 incarceration for the offense for which parole is sought. The
44 initial eligibility interview and any subsequent eligibility
45 interviews may occur only if the juvenile offender has received
46 no approved disciplinary reports for at least 3 years before the
47 scheduled eligibility interview.

48 (d) In determining whether the juvenile offender has
49 demonstrated maturity and reform and whether she or he should be
50 granted parole, the commission must consider all of the
51 following:

52 1. The wishes of the victim or the opinions of the
53 victim's next of kin.

54 2. Whether the juvenile offender was a relatively minor
55 participant in the criminal offense or acted under extreme
56 duress or domination of another person.

57 3. Whether the juvenile offender has shown sincere and
 58 sustained remorse for the criminal offense.

59 4. Whether the juvenile offender's age, maturity, and
 60 psychological development at the time of the offense affected
 61 her or his behavior.

62 5. Whether the juvenile offender, while in the custody of
 63 the department, has aided inmates suffering from catastrophic or
 64 terminal medical, mental, or physical conditions or has
 65 prevented risk or injury to staff, citizens, or other inmates.

66 6. Whether the juvenile offender has successfully
 67 completed any General Educational Development or other
 68 educational, technical, work, vocational, or self-rehabilitation
 69 program.

70 7. Whether the juvenile offender was a victim of sexual,
 71 physical, or emotional abuse before she or he committed the
 72 offense.

73 8. The results of any mental health assessment or
 74 evaluation of the juvenile offender.

75 (e) A juvenile offender who is not granted parole under
 76 this subsection after an initial eligibility interview is
 77 eligible for a reinterview 7 years after the date of the denial
 78 of the grant of parole and every 7 years thereafter.

79 Section 3. This act shall take effect upon becoming a law.

HB 137

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Offenses Against Unborn Children

SPONSOR(S): Ahern; Trujillo and others

TIED BILLS: None IDEN./SIM. BILLS: SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham <i>AK</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. The term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S, which provides that a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures."

The bill amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill defines the term "unborn child" as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill conforms terminology in the vehicular homicide and DUI manslaughter statutes to refer to "unborn child."

The bill also amends s. 782.09, F.S., to specify that the offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

On December 14, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

This bill takes effect October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Law

In 2004, the Unborn Victims of Violence Act (act) was enacted to add new sections for the “protection of unborn children.”¹ Under the act, any person who commits certain specified offenses and thereby causes the death of, or bodily injury to, a child who is in utero during the commission of the offense is guilty of a separate offense. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. However, in no instance may be the death penalty be imposed. The act does not require proof that the person engaging in the offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero.

The act defines the phrase “child in utero” to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The act also specifies that nothing in the act shall be construed to permit the prosecution:

- Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
- Of any person for any medical treatment of the pregnant woman or her unborn child; or
- Of any woman with respect to her unborn child.

State Law

At least thirty-six states have statutes that criminalize the killing of a fetus or “unborn child.”² These statutes vary with respect to the point at which criminal liability will attach; that is, the states identify different gestational stages at which the killing of an embryo or fetus will result in criminal liability.³

Currently, three sections of Florida Statutes criminalize the killing of a “viable fetus” or an “unborn quick child.”

Vehicular Homicide

Section 782.071, F.S., defines vehicular homicide as “the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.”⁴ The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S.,⁵ for all deaths described in the statute. The statute provides that a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Killing of Unborn Quick Child by Injury to the Mother

Section 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed

¹ Public Law 108-212, 18 U.S.C. 1841.

² State Homicide Laws that Recognize Unborn Victims (http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html)(last visited on January 23, 2012).

³ *Id.*

⁴ Section 782.071, F.S.

⁵ Section 768.19, F.S., provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

murder in the same degree as that which would have been committed against the mother.⁶ Currently, the term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S. (vehicular homicide).

DUI Manslaughter

Section 316.193(3), F.S., provides, in part, that in order to prove a DUI manslaughter case, the state must establish the following elements:

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn quick child.⁷
- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.

The statute defines the term "unborn quick child" in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S. (vehicular homicide).

Effect of the Bill

The bill cites the act as the "Florida Unborn Victims of Violence Act."

The bill amends s. 782.071, F.S. (vehicular homicide), by replacing the term "viable fetus" with "unborn child," and defining the term as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill specifies that the statute should not be construed to create or expand any civil cause of action for negligence based on statute or common law.

The bill amends s. 782.09, F.S. (killing of unborn child by injury to the mother), by replacing the term "unborn quick child" with "unborn child" and defines the term in accordance with s. 782.071, F.S. (vehicular homicide). The bill also amends the statute to specify that the offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

The bill also amends s. 316.193, F.S. (DUI manslaughter) by replacing the term "unborn quick child" with "unborn child" and defining the term in accordance with s. 782.071, F.S. (vehicular homicide).

The bill also makes conforming changes to s 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S., the offense severity ranking chart.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Florida Unborn Victims of Violence Act."

Section 2. Amends s. 782.071, F.S., relating to vehicular homicide.

Section 3. Amends s. 782.09, F.S., relating to killing of unborn quick child by injury to mother.

Section 4. Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 5. Amends s. 435.04, F.S., relating to Level 2 screening standards.

⁶ This section of statute does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S. Section 782.09(4), F.S.

⁷ The term "unborn quick child" is defined as a "viable fetus" which is defined as a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." See s. 782.071, F.S.

Section 6. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 7. This bill takes effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On December 14, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to offenses against unborn children;
 3 providing a short title; amending s. 782.071, F.S.,
 4 relating to vehicular homicide; defining the term
 5 "unborn child" for specified purposes; revising
 6 terminology to refer to "unborn child" rather than
 7 "viable fetus"; providing legislative intent; amending
 8 s. 782.09, F.S.; revising terminology; providing that
 9 certain offenses relating to the killing of an unborn
 10 child by injury to the mother do not require specified
 11 knowledge or intent or death of the mother; amending
 12 ss. 316.193, 435.04, and 921.0022, F.S.; conforming
 13 terminology; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. This act may be cited as the "Florida Unborn
18 Victims of Violence Act."

19 Section 2. Section 782.071, Florida Statutes, is amended
20 to read:

21 782.071 Vehicular homicide.—"Vehicular homicide" is the
22 killing of a human being, or the killing of an unborn child ~~a~~
23 ~~viable fetus~~ by any injury to the mother, caused by the
24 operation of a motor vehicle by another in a reckless manner
25 likely to cause the death of, or great bodily harm to, another.

26 (1) Vehicular homicide is:

27 (a) A felony of the second degree, punishable as provided
28 in s. 775.082, s. 775.083, or s. 775.084.

29 (b) A felony of the first degree, punishable as provided
 30 in s. 775.082, s. 775.083, or s. 775.084, if:

31 1. At the time of the accident, the person knew, or should
 32 have known, that the accident occurred; and

33 2. The person failed to give information and render aid as
 34 required by s. 316.062.

35

36 This paragraph does not require that the person knew that the
 37 accident resulted in injury or death.

38 (2) For purposes of this section, the term "unborn child"
 39 means the unborn offspring of a human being at any stage of
 40 gestation from fertilization until birth ~~a fetus is viable when~~
 41 ~~it becomes capable of meaningful life outside the womb through~~
 42 ~~standard medical measures.~~

43 (3) A right of action for civil damages shall exist under
 44 s. 768.19, under all circumstances, for all deaths described in
 45 this section. However, this section does not create or expand
 46 any civil cause of action for negligence based on statute or
 47 common law.

48 (4) In addition to any other punishment, the court may
 49 order the person to serve 120 community service hours in a
 50 trauma center or hospital that regularly receives victims of
 51 vehicle accidents, under the supervision of a registered nurse,
 52 an emergency room physician, or an emergency medical technician
 53 pursuant to a voluntary community service program operated by
 54 the trauma center or hospital.

55 Section 3. Section 782.09, Florida Statutes, is amended to
 56 read:

57 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

58 (1) The unlawful killing of an unborn ~~quick~~ child, by any
 59 injury to the mother of such child which would be murder if it
 60 resulted in the death of such mother, shall be deemed murder in
 61 the same degree as that which would have been committed against
 62 the mother. Any person, other than the mother, who unlawfully
 63 kills an unborn ~~quick~~ child by any injury to the mother:

64 (a) Which would be murder in the first degree constituting
 65 a capital felony if it resulted in the mother's death commits
 66 murder in the first degree constituting a capital felony,
 67 punishable as provided in s. 775.082.

68 (b) Which would be murder in the second degree if it
 69 resulted in the mother's death commits murder in the second
 70 degree, a felony of the first degree, punishable as provided in
 71 s. 775.082, s. 775.083, or s. 775.084.

72 (c) Which would be murder in the third degree if it
 73 resulted in the mother's death commits murder in the third
 74 degree, a felony of the second degree, punishable as provided in
 75 s. 775.082, s. 775.083, or s. 775.084.

76 (2) The unlawful killing of an unborn ~~quick~~ child by any
 77 injury to the mother of such child which would be manslaughter
 78 if it resulted in the death of such mother is ~~shall be deemed~~
 79 manslaughter. A person who unlawfully kills an unborn ~~quick~~
 80 child by any injury to the mother which would be manslaughter if
 81 it resulted in the mother's death commits manslaughter, a felony
 82 of the second degree, punishable as provided in s. 775.082, s.
 83 775.083, or s. 775.084.

84 (3) The death of the mother resulting from the same act or

85 criminal episode that caused the death of the unborn ~~quick~~ child
 86 does not bar prosecution under this section.

87 (4) This section does not authorize the prosecution of any
 88 person in connection with a termination of pregnancy pursuant to
 89 chapter 390.

90 (5) For purposes of this section, the definition of the
 91 term "unborn ~~quick~~ child" shall be determined in accordance with
 92 the definition of an unborn child ~~viable fetus~~ as set forth in
 93 s. 782.071.

94 (6) An offense under this section does not require:

95 (a) That the person engaging in the conduct:

96 1. Had knowledge or should have had knowledge that the
 97 mother was pregnant; or

98 2. Intended to cause the death of, or bodily injury to,
 99 the unborn child.

100 (b) The death of the mother.

101 Section 4. Subsection (3) of section 316.193, Florida
 102 Statutes, is amended to read:

103 316.193 Driving under the influence; penalties.-

104 (3) Any person:

105 (a) Who is in violation of subsection (1);

106 (b) Who operates a vehicle; and

107 (c) Who, by reason of such operation, causes or
 108 contributes to causing:

109 1. Damage to the property or person of another commits a
 110 misdemeanor of the first degree, punishable as provided in s.
 111 775.082 or s. 775.083.

112 2. Serious bodily injury to another, as defined in s.

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113 316.1933, commits a felony of the third degree, punishable as
 114 provided in s. 775.082, s. 775.083, or s. 775.084.

115 3. The death of any human being or unborn ~~quick~~ child
 116 commits DUI manslaughter, and commits:

117 a. A felony of the second degree, punishable as provided
 118 in s. 775.082, s. 775.083, or s. 775.084.

119 b. A felony of the first degree, punishable as provided in
 120 s. 775.082, s. 775.083, or s. 775.084, if:

121 (I) At the time of the crash, the person knew, or should
 122 have known, that the crash occurred; and

123 (II) The person failed to give information and render aid
 124 as required by s. 316.062.

125

126 For purposes of this subsection, the definition of the term
 127 "unborn ~~quick~~ child" shall be determined in accordance with the
 128 definition of an unborn child ~~viable fetus~~ as set forth in s.
 129 782.071. A person who is convicted of DUI manslaughter shall be
 130 sentenced to a mandatory minimum term of imprisonment of 4
 131 years.

132 Section 5. Paragraph (g) of subsection (2) of section
 133 435.04, Florida Statutes, is amended to read:

134 435.04 Level 2 screening standards.—

135 (2) The security background investigations under this
 136 section must ensure that no persons subject to the provisions of
 137 this section have been arrested for and are awaiting final
 138 disposition of, have been found guilty of, regardless of
 139 adjudication, or entered a plea of nolo contendere or guilty to,
 140 or have been adjudicated delinquent and the record has not been

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141 sealed or expunged for, any offense prohibited under any of the
 142 following provisions of state law or similar law of another
 143 jurisdiction:

144 (g) Section 782.09, relating to killing of an unborn ~~quick~~
 145 child by injury to the mother.

146 Section 6. Paragraph (g) of subsection (3) of section
 147 921.0022, Florida Statutes, is amended to read:

148 921.0022 Criminal Punishment Code; offense severity
 149 ranking chart.—

150 (3) OFFENSE SEVERITY RANKING CHART

151 (g) LEVEL 7

152

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer

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155

			who is in a patrol vehicle with siren and lights activated.
156	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
157	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
158	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
159	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
160	456.065(2)	3rd	Practicing a health care profession without a license.
161	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
162			

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163	458.327(1)	3rd	Practicing medicine without a license.
164	459.013(1)	3rd	Practicing osteopathic medicine without a license.
165	460.411(1)	3rd	Practicing chiropractic medicine without a license.
166	461.012(1)	3rd	Practicing podiatric medicine without a license.
167	462.17	3rd	Practicing naturopathy without a license.
168	463.015(1)	3rd	Practicing optometry without a license.
169	464.016(1)	3rd	Practicing nursing without a license.
170	465.015(2)	3rd	Practicing pharmacy without a license.
171	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.

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172	467.201	3rd	Practicing midwifery without a license.
173	468.366	3rd	Delivering respiratory care services without a license.
174	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
175	483.901(9)	3rd	Practicing medical physics without a license.
176	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
177	484.053	3rd	Dispensing hearing aids without a license.
178	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
	560.123(8)(b)1.	3rd	Failure to report currency or

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179	560.125(5) (a)	3rd	<p>payment instruments exceeding \$300 but less than \$20,000 by a money services business.</p> <p>Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.</p>
180	655.50(10) (b) 1.	3rd	<p>Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.</p>
181	775.21(10) (a)	3rd	<p>Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.</p>
182	775.21(10) (b)	3rd	<p>Sexual predator working where children regularly congregate.</p>
183	775.21(10) (g)	3rd	<p>Failure to report or providing false information about a sexual predator; harbor or</p>

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184			conceal a sexual predator.
185	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
186	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
187	782.071	2nd	Killing of a human being or <u>unborn child</u> viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
188	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
189	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

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190	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
191	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
192	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
193	784.048(7)	3rd	Aggravated stalking; violation of court order.
194	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
195	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
196	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
197	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other

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			detainee.
198	784.083(1)	1st	Aggravated battery on code inspector.
199	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
200	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
201	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
202	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
203	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
204	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax

			weapon of mass destruction while committing or attempting to commit a felony.
205	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
206	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
207	796.03	2nd	Procuring any person under 16 years for prostitution.
208	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
209	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
210			

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211	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
212	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
213	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
214	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
215	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
216	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand

			theft in 2nd degree.
217	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
218	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
219	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
220	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
221	812.131(2)(a)	2nd	Robbery by sudden snatching.
222	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
223	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
224			

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225	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
226	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
227	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
228	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
229	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability,

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			or disfigurement.
230	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
231	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
232	838.015	2nd	Bribery.
233	838.016	2nd	Unlawful compensation or reward for official behavior.
234	838.021(3)(a)	2nd	Unlawful harm to a public servant.
235	838.22	2nd	Bid tampering.
236	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
237	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
238			

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239	872.06	2nd	Abuse of a dead human body.
240	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
241	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
242	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

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243	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
244	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
245	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
246	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
247	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
248	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than

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249			28 grams.
	893.135	1st	Trafficking in flunitrazepam, 4
	(1) (g) 1.a.		grams or more, less than 14
250			grams.
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.a.		hydroxybutyric acid (GHB), 1
			kilogram or more, less than 5
			kilograms.
251			
	893.135	1st	Trafficking in 1,4-Butanediol,
	(1) (j) 1.a.		1 kilogram or more, less than 5
			kilograms.
252			
	893.135	1st	Trafficking in Phenethylamines,
	(1) (k) 2.a.		10 grams or more, less than 200
			grams.
253			
	893.1351(2)	2nd	Possession of place for
			trafficking in or manufacturing
			of controlled substance.
254			
	896.101(5) (a)	3rd	Money laundering, financial
			transactions exceeding \$300 but
			less than \$20,000.
255			

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256	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
257	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
258	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
259	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
260	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure

			to respond to address verification.
261	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
262	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
263	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
264	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
265	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
266	985.4815(12)	3rd	Failure to report or providing false information about a

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sexual offender; harbor or
conceal a sexual offender.

267

985.4815(13)

3rd

Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

268

269

Section 7. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 455 Criminal Offenders
SPONSOR(S): Glorioso and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham <i>SM</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual offenses. Specifically, the bill:

- Amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add s. 826.04, F.S. (incest), where the victim is a minor and the defendant is 18 years of age or older as a qualifying offense.
- Requires sexual predators and offenders to provide the sheriff and the Florida Department of Law Enforcement any Internet identifier the offender uses and defines the term "Internet identifier."
- Requires sexual offenders and predators to provide their telephone numbers, passport, immigration status, and other specified information to the sheriff as part of the registration process.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry pursuant to s. 943.04354, F.S.
- Requires state agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
- Requires courts to impose electronic monitoring on probationers, community controllees, and conditional releasees convicted of certain sexual offenses.
- Requires sexual offenders who are arrested for another offense (other than a misdemeanor offender under ch. 316, F.S.), to be held until first appearance in order to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a prison bed impact in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. Failure to register is generally punishable as an unranked third degree felony. The bill may also have a fiscal impact on the Florida Department of Law Enforcement as well as a jail bed impact. See fiscal section.

The bill is effective April 30, 2013, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Offender Qualifying Offenses (Sections 2, 6, and 7)

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
 - Section 794.05, F.S. (unlawful activity with certain minors)
 - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
 - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
 - Section 827.071, F.S. (sexual performance by a child)
 - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
 - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
 - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
 - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
 - Section 847.0145, F.S. (selling or buying of minors)
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction¹ imposed for any conviction of an offense described above.

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

Effect of the Bill

The bill amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add s. 826.04, F.S. (incest), where the victim is a minor and the defendant is 18 years of age or older as a qualifying offense.²

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

² Section 826.04, F.S., provides that whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

Sexual Predator and Sexual Offender Registration (Sections 1, 2, 6, 7, 12 and 13)

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.³ A sexual predator or sexual offender must comply with a number of statutory registration requirements.⁴ Failure to comply with these requirements is generally a third degree felony.⁵

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁶ During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department.⁷ The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.⁸

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.⁹ For example, a predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.¹⁰ In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.¹¹

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders to provide the following registration information:

- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Require sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of 7 days or more is outside of the United States.
- Require sexual predators and offenders who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.

³ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

⁴ *Id.*

⁵ Sections 775.21(10) and 943.0435(14), F.S.

⁶ See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

⁷ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 2, 5, 6, and 7)

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.¹² Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹³

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term "instant message name" as "an identifier that allows a person to communicate in real time with another person using the Internet."

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term "instant message name" with "Internet identifier." The bill defines the term "Internet identifier" as "all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN)." An offender's voluntary disclosure of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption for such personal information. As a result, sexual predators and offenders will be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term "instant message name" with the term "Internet identifier" in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.¹⁴

Search of Registration Information (Section 3)

Section 943.04351, F.S., requires state agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,¹⁵ to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

Effect of the Bill

The bill amends s. 943.04351, F.S., to require state agencies and governmental subdivisions to also search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

Removal of the Requirement to Register as a Sexual Offender (Section 4)

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.¹⁶ However, there are ways in which the registration requirement can be removed.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and

¹² See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹³ FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

¹⁴ Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

¹⁵ These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

¹⁶ Sections 775.21(6) and 943.0435(11), F.S.

3. Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

Effect of the Bill

The bill amends s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person meets the criteria in 1. and 2., described above, and:

3. Is not more than 4 years older than the victim of the violation who was 13 years of age or older but not more than 18 years of age at the time the person committed the violation.

This change will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed.

Definition of Risk Assessment (Section 8)

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

Section 947.005, F.S., currently defines the term "risk assessment" as "an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child."

In 2010, the definition of the term "risk assessment" in s. 948.001, F.S. (relating to probation), was amended to remove the requirement that the assessment be completed by *an independent* qualified practitioner.¹⁷ However, this change was not made to the definition contained in s. 947.005, F.S.

Effect of the Bill

The bill amends the definition of the term "risk assessment" in s. 947.005, F.S., to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

Conditions of Supervision – Conditional Release (Section 9)

Section 947.1405, F.S., requires certain repeat offenders convicted of specified offenses to be released under supervision subject to specified terms and conditions, which are set by the Florida Parole Commission (Commission). This type of supervision is called "conditional release." Currently, the statute requires the Commission to impose certain conditions of supervision on conditional releasees convicted of specified sexual offenses (e.g., a curfew, a prohibition on living within 1,000 feet of certain locations, etc.).

Section 947.1405(10), F.S., currently requires the Commission to impose electronic monitoring (EM) as a condition of supervision for a conditional releasee whose crime was committed on or after September 1, 2005, and who:

- Was convicted of a violation of ch. 794, F.S., or ss. 800.04(4), (5), or (6), 827.071, or 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender was 18 years of age or older; or
- Is designated as a sexual predator pursuant to s. 775.21, F.S.

¹⁷ Chapter 2010-92, L.O.F.

Effect of the Bill

The bill requires the Commission to impose EM as a condition of supervision for a conditional releasee whose crime was committed on or after July 1, 2012, and who has been convicted of a violation of s. 800.04(7)(b), F.S. (lewd or lascivious exhibition by an offender 18 or older), s. 847.0135, F.S. (computer pornography, traveling to meet a minor), or a similar offense in another jurisdiction.

Conditions of Sexual Offender Probation (Section 10)

Probation is a form of community supervision requiring specified contacts with parole and probation officers and compliance with court-ordered conditions of supervision.¹⁸ When someone is sentenced to probation, the court determines the terms and conditions of their supervision.¹⁹

Section 948.30, F.S., sets forth standard conditions of supervision that a court must impose on offenders convicted of certain sexual offenses. Subsection (3) of the statute requires the court to impose EM on offenders whose crime was committed on or after September 1, 2005, and who:

- (a) Is placed on probation or community control for a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.;
- (b) Is designated a sexual predator pursuant to s. 775.21, F.S.; or
- (c) Has previously been convicted of a violation of ch. 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.²⁰

Effect of the Bill

The bill amends s. 948.30(3)(b) and (c), F.S., to require courts to impose EM on offenders whose crime was committed on or after September 1, 2005, and who:

- (b) Is designated a sexual predator pursuant to s. 775.21, F.S., or a similar designation in another jurisdiction; or
- (c) Has previously been convicted of a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., or a similar offense in another jurisdiction and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

The bill also creates a new subsection (5) that requires courts to impose EM on offenders whose crime was committed on or after July 1, 2012, and who:

- Is placed on probation or community control for a violation for ss. 800.04(7)(b) or 847.0135, F.S.; or
- Has previously been convicted of a violation of ss. 800.04(7)(b) or 847.0135, F.S., or a similar offense in another jurisdiction.

The bill also requires the court to impose all of the conditions of supervision contained in s. 948.30(1) and (2), F.S., on offenders whose crime was committed on or after September 1, 2005, and who are placed on probation or community control for a violation of s. 847.0135(3) or (4), F.S.

Conditions of Supervision – Sex Offender Treatment (Section 11)

Section 948.03, F.S., sets forth the standard conditions of probation that offenders must comply with. Standard conditions of probation do not require oral pronouncement at sentencing. In contrast, special conditions of probation, those conditions that are not specifically authorized by statute, must be imposed by oral pronouncement at sentencing and be included in the written sentencing order. Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual

¹⁸ Section 948.001(8), F.S.

¹⁹ Section 948.03, F.S.

²⁰ Section 948.30(3), F.S.

predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.

Effect of the Bill

The bill specifies that conditions imposed pursuant to s. 948.31, F.S., are standard conditions of supervision and do not require oral pronouncement at the time of sentencing.

The bill provides that if the court determines that a need for treatment is established by the evaluation, the offender must actively participate in and successfully complete the treatment. Courts must require the offender to comply with program rules, which can include a safety plan and polygraph examination for treatment purposes. The bill also authorizes the court to, when recommended by a qualified practitioner or the offender's supervising officer, restrict the offender from having unsupervised contact with minors or from residing with a minor.

Bail Determinations (Section 14)

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.²¹ Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.²²

Bail requires an accused person to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.²³
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.²⁴

²¹ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

²² *Id.*

²³ Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

²⁴ Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,²⁵ or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.²⁶

Effect of the Bill

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,²⁷ is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance²⁸ on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Split Sentences (Section 15)

Section 948.012, F.S., authorizes a court to impose a split sentence whereby defendants are placed on probation or community control after completing any specified period of incarceration. The statute currently requires the period of probation or community control to commence immediately upon release from incarceration, whether by parole or gain-time allowance. The bill removes the “whether by parole or gain-time allowance” phrase.

Special Terms and Conditions of Probation (Section 16)

Section 948.039, F.S., authorizes a court to impose special terms and conditions of probation or community control (in addition to standard conditions). The bill adds language to this section specifying that probation or community control commences immediately upon the release of the offender from incarceration.

Severability Clause

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

B. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 2. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 3. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 4. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 5. Amends s. 943.0437, F.S., relating to commercial social networking websites.

²⁵ Chapter 874, F.S., relates to criminal gang enforcement and prevention.

²⁶ Section 903.046, F.S.

²⁷ Chapter 316, F.S., is the State Uniform Traffic Control chapter.

²⁸ See Rule 3.130, Fla. R. Crim. Proc.

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. 947.005, F.S., relating to definitions.

Section 9. Amends s. 947.1405, F.S., relating to conditional release program.

Section 10. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 11. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 12. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 13. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 14. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 15. Amends s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 16. Amends s. 948.039, F.S., relating to special terms and conditions of probation or community control imposed by court order.

Section 17. Provides a severability clause.

Section 18. Provides an effective date of April 30, 2013, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. The bill may have a prison bed impact on the Department of Corrections in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. However, failure to register is generally punishable as an unranked third degree felony, so the impact to state prison beds may be insignificant.

The bill requires the court to impose electronic monitoring on additional offenders. This may have a negative fiscal impact on the Department of Corrections.

The bill will likely require FDLE to spend funds to hire contract programming staff to complete programming and testing necessary to implement the qualifying offense and registration provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

In January, 2012, there were 48,700 registered sexual offenders and 9,289 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the 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 and municipalities; and
- Is a criminal law.

3. Other:

Ex Post Facto

In evaluating whether a law violates the ex post facto clause, a two-prong test must be applied: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable.²⁹

Section 948.30(3), F.S., requires the court to impose electronic monitoring on offenders whose crime was committed on or after September 1, 2005, who:

- (d) Are placed on probation or community control for a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.;
- (e) Are designated a sexual predator pursuant to s. 775.21, F.S.; or
- (f) Have previously been convicted of a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

²⁹ *Gwong v. Singletary*, 683 So.2d 109 (Fla. 1996).

Section 10 of the bill expands the pool of offenders that the above statute applies to by adding that it applies to offenders whose crime was committed on or after September 1, 2005, and who have a similar designation or offense in another jurisdiction. This may violate the ex post facto clause.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 11 of the bill mandates that the court require any person who is placed on community supervision and who is required to register as a sexual offender to be evaluated to determine the offender's need for sex offender treatment. This would require persons who are required to register as a sexual offender due to an offense committed 20+ years ago and who are now placed on probation for a non-sex related offense (e.g., check fraud) to undergo a sex offender treatment evaluation.

Section 16 of the bill amends s. 948.039, F.S., which authorizes a court to impose special terms and conditions of probation or community control (in addition to standard conditions). The bill adds language to this section specifying that probation or community control commences immediately upon the release of the offender from incarceration. It is unclear how this provision is relevant to this statute. Also, oftentimes offenders are placed on probation without being sentenced to incarceration.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to criminal offenders; amending s.
3 775.21, F.S.; replacing the definition of the term
4 "instant message name" with the definition of the term
5 "Internet identifier"; providing that voluntary
6 disclosure of specified information waives a
7 disclosure exemption for such information; conforming
8 provisions; requiring disclosure of passport and
9 immigration status information; requiring that a
10 sexual predator who is unable to secure or update a
11 driver license or identification card within a
12 specified period must report specified information to
13 the local sheriff's office within a specified period
14 after such change with confirmation that he or she
15 also reported such information to the Department of
16 Highway Safety and Motor Vehicles; requiring a sexual
17 predator released in a homeless or transient status to
18 report in person to the sheriff's office in the county
19 in which he or she is located within a specified
20 period; revising reporting requirements if a sexual
21 predator plans to leave the United States for more
22 than a specified period; amending s. 943.0435, F.S.;
23 replacing the definition of the term "instant message
24 name" with the definition of the term "Internet
25 identifier"; conforming provisions; requiring
26 disclosure of passport and immigration status
27 information; requiring that a sexual predator who is
28 unable to secure or update a driver license or

29 identification card within a specified period must
 30 report specified information to the local sheriff's
 31 office within a specified period of such change with
 32 confirmation that he or she also reported such
 33 information to the Department of Highway Safety and
 34 Motor Vehicles; providing additional requirements for
 35 sexual offenders intending to reside outside of the
 36 United States; amending s. 943.04351, F.S.; requiring
 37 a specified national search of registration
 38 information regarding sexual predators and sexual
 39 offenders prior to appointment or employment of
 40 persons by state agencies and governmental
 41 subdivisions; amending s. 943.04354, F.S.; revising
 42 the age range applicable to provisions allowing
 43 removal of the requirement to register as a sexual
 44 offender or sexual predator in certain circumstances;
 45 revising eligibility requirements for removal of the
 46 requirement to register as a sexual offender or sexual
 47 predator; amending s. 943.0437, F.S.; replacing the
 48 definition of the term "instant message name" with the
 49 definition of the term "Internet identifier";
 50 conforming provisions; amending ss. 944.606 and
 51 944.607, F.S.; replacing the definition of the term
 52 "instant message name" with the definition of the term
 53 "Internet identifier"; conforming provisions;
 54 requiring disclosure of passport and immigration
 55 status information; amending s. 947.005, F.S.;

56 revising the definition of the term "risk assessment";

57 amending s. 947.1405, F.S.; requiring that certain
 58 conditional releasees be subject to electronic
 59 monitoring; amending s. 948.30, F.S.; providing
 60 restrictions for certain persons who receive a
 61 designation equivalent to sexual predator in another
 62 jurisdiction or who are convicted of certain offenses
 63 in another jurisdiction; providing for electronic
 64 monitoring of certain persons; subjecting persons
 65 convicted of specified offenses to additional
 66 restrictions; amending s. 948.31, F.S.; providing that
 67 conditions imposed under that section do not require
 68 oral pronouncement at the time of sentencing and shall
 69 be considered standard conditions of probation or
 70 community control for certain offenders; revising
 71 provisions relating to evaluation of persons subject
 72 to registration as sexual offenders or sexual
 73 predators; authorizing a court to require treatment
 74 from a qualified practitioner in certain
 75 circumstances; authorizing a court to restrict the
 76 probationer or community controllee from having
 77 unsupervised contact with a minor or prohibit him or
 78 her from residing with a minor in certain
 79 circumstances; amending ss. 985.481 and 985.4815,
 80 F.S.; requiring disclosure of passport and immigration
 81 status information by certain sexual offenders
 82 adjudicated delinquent and certain juvenile sexual
 83 offenders; amending s. 903.046, F.S.; requiring a
 84 court considering whether to release a defendant on

85 bail to determine whether the defendant is subject to
 86 registration as a sexual offender or sexual predator
 87 and, if so, to hold the defendant without bail until
 88 the first appearance on the case; providing an
 89 exception; amending s. 948.012, F.S.; revising
 90 language concerning commencement of the period of
 91 probation or community control; amending s. 948.039,
 92 F.S.; providing that a probation or community control
 93 period commences immediately upon the release of the
 94 offender from incarceration; providing severability;
 95 providing effective dates.

96

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

98

99 Section 1. Paragraph (i) of subsection (2), paragraphs
 100 (a), (e), (g), (i), and (j) of subsection (6), paragraph (a) of
 101 subsection (8), and paragraph (a) of subsection (10) of section
 102 775.21, Florida Statutes, are amended to read:

103 775.21 The Florida Sexual Predators Act.—

104 (2) DEFINITIONS.—As used in this section, the term:

105 (i) "Internet identifier ~~instant message name~~" means all
 106 electronic mail, chat, instant messenger, social networking, or
 107 similar name used for Internet communication, but does not
 108 include a date of birth, social security number, or personal
 109 identification number (PIN) ~~an identifier that allows a person~~
 110 ~~to communicate in real time with another person using the~~
 111 ~~Internet.~~ Voluntary disclosure by the sexual predator of his or
 112 her date of birth, social security number, or personal

113 | identification number (PIN) as an Internet identifier waives the
 114 | disclosure exemption in this paragraph for such personal
 115 | information.

116 | (6) REGISTRATION.—

117 | (a) A sexual predator must register with the department
 118 | through the sheriff's office by providing the following
 119 | information to the department:

120 | 1. Name; social security number; age; race; sex; date of
 121 | birth; height; weight; hair and eye color; photograph; address
 122 | of legal residence and address of any current temporary
 123 | residence, within the state or out of state, including a rural
 124 | route address and a post office box; if no permanent or
 125 | temporary address, any transient residence within the state;
 126 | address, location or description, and dates of any current or
 127 | known future temporary residence within the state or out of
 128 | state; all ~~any~~ electronic mail addresses ~~address~~ and all
 129 | Internet identifiers ~~any instant message name~~ required to be
 130 | provided pursuant to subparagraph (g)4.; all home telephone
 131 | numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date
 132 | and place of any employment; date and place of each conviction;
 133 | fingerprints; and a brief description of the crime or crimes
 134 | committed by the offender. A post office box shall not be
 135 | provided in lieu of a physical residential address. The sexual
 136 | predator must also produce or provide information about his or
 137 | her passport, if he or she has a passport, and, if he or she is
 138 | an alien, must produce or provide information about documents
 139 | establishing his or her immigration status.

140 | a. If the sexual predator's place of residence is a motor

141 vehicle, trailer, mobile home, or manufactured home, as defined
 142 in chapter 320, the sexual predator shall also provide to the
 143 department written notice of the vehicle identification number;
 144 the license tag number; the registration number; and a
 145 description, including color scheme, of the motor vehicle,
 146 trailer, mobile home, or manufactured home. If a sexual
 147 predator's place of residence is a vessel, live-aboard vessel,
 148 or houseboat, as defined in chapter 327, the sexual predator
 149 shall also provide to the department written notice of the hull
 150 identification number; the manufacturer's serial number; the
 151 name of the vessel, live-aboard vessel, or houseboat; the
 152 registration number; and a description, including color scheme,
 153 of the vessel, live-aboard vessel, or houseboat.

154 b. If the sexual predator is enrolled, employed, or
 155 carrying on a vocation at an institution of higher education in
 156 this state, the sexual predator shall also provide to the
 157 department the name, address, and county of each institution,
 158 including each campus attended, and the sexual predator's
 159 enrollment or employment status. Each change in enrollment or
 160 employment status shall be reported in person at the sheriff's
 161 office, or the Department of Corrections if the sexual predator
 162 is in the custody or control of or under the supervision of the
 163 Department of Corrections, within 48 hours after any change in
 164 status. The sheriff or the Department of Corrections shall
 165 promptly notify each institution of the sexual predator's
 166 presence and any change in the sexual predator's enrollment or
 167 employment status.

168 2. Any other information determined necessary by the

169 department, including criminal and corrections records;
 170 nonprivileged personnel and treatment records; and evidentiary
 171 genetic markers when available.

172 (e)1. If the sexual predator is not in the custody or
 173 control of, or under the supervision of, the Department of
 174 Corrections or is not in the custody of a private correctional
 175 facility, the sexual predator shall register in person:

176 a. At the sheriff's office in the county where he or she
 177 establishes or maintains a residence within 48 hours after
 178 establishing or maintaining a residence in this state; and

179 b. At the sheriff's office in the county where he or she
 180 was designated a sexual predator by the court within 48 hours
 181 after such finding is made.

182 2. Any change in the sexual predator's permanent or
 183 temporary residence, name, or all any electronic mail addresses
 184 ~~address~~ and all Internet identifiers ~~any instant message name~~
 185 required to be provided pursuant to subparagraph (g)4., after
 186 the sexual predator registers in person at the sheriff's office
 187 as provided in subparagraph 1., shall be accomplished in the
 188 manner provided in paragraphs (g), (i), and (j). When a sexual
 189 predator registers with the sheriff's office, the sheriff shall
 190 take a photograph and a set of fingerprints of the predator and
 191 forward the photographs and fingerprints to the department,
 192 along with the information that the predator is required to
 193 provide pursuant to this section.

194 (g)1. Each time a sexual predator's driver ~~driver's~~
 195 license or identification card is subject to renewal, and,
 196 without regard to the status of the predator's driver ~~driver's~~

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197 | license or identification card, within 48 hours after any change
 198 | of the predator's residence or change in the predator's name by
 199 | reason of marriage or other legal process, the predator shall
 200 | report in person to a driver ~~driver's~~ license office and shall
 201 | be subject to the requirements specified in paragraph (f). The
 202 | Department of Highway Safety and Motor Vehicles shall forward to
 203 | the department and to the Department of Corrections all
 204 | photographs and information provided by sexual predators.
 205 | Notwithstanding the restrictions set forth in s. 322.142, the
 206 | Department of Highway Safety and Motor Vehicles is authorized to
 207 | release a reproduction of a color-photograph or digital-image
 208 | license to the Department of Law Enforcement for purposes of
 209 | public notification of sexual predators as provided in this
 210 | section. A sexual predator who is unable to secure or update a
 211 | driver license or identification card with the Department of
 212 | Highway Safety and Motor Vehicles as provided in paragraph (f)
 213 | and this paragraph must also report any change of the predator's
 214 | residence or change in the predator's name by reason of marriage
 215 | or other legal process within 48 hours after the change to the
 216 | sheriff's office in the county where the predator resides or is
 217 | located and provide confirmation that he or she reported such
 218 | information to the Department of Highway Safety and Motor
 219 | Vehicles.

220 | 2. A sexual predator who vacates a permanent, temporary,
 221 | or transient residence and fails to establish or maintain
 222 | another permanent, temporary, or transient residence shall,
 223 | within 48 hours after vacating the permanent, temporary, or
 224 | transient residence, report in person to the sheriff's office of

225 the county in which he or she is located. The sexual predator
 226 shall specify the date upon which he or she intends to or did
 227 vacate such residence. If the sexual predator is released from
 228 custody in a homeless or transient status, he or she must report
 229 in person to the sheriff's office in the county in which he or
 230 she is located within 24 hours. The sexual predator must provide
 231 or update all of the registration information required under
 232 paragraph (a). The sexual predator must provide an address for
 233 the residence or other place that he or she is or will be
 234 located during the time in which he or she fails to establish or
 235 maintain a permanent or temporary residence.

236 3. A sexual predator who remains at a permanent,
 237 temporary, or transient residence after reporting his or her
 238 intent to vacate such residence shall, within 48 hours after the
 239 date upon which the predator indicated he or she would or did
 240 vacate such residence, report in person to the sheriff's office
 241 to which he or she reported pursuant to subparagraph 2. for the
 242 purpose of reporting his or her address at such residence. When
 243 the sheriff receives the report, the sheriff shall promptly
 244 convey the information to the department. An offender who makes
 245 a report as required under subparagraph 2. but fails to make a
 246 report as required under this subparagraph commits a felony of
 247 the second degree, punishable as provided in s. 775.082, s.
 248 775.083, or s. 775.084.

249 4. A sexual predator must register all ~~any~~ electronic mail
 250 addresses and Internet identifiers ~~address or instant message~~
 251 ~~name~~ with the department prior to using such electronic mail
 252 addresses and Internet identifiers ~~address or instant message~~

253 ~~name on or after October 1, 2007.~~ The department shall establish
 254 an online system through which sexual predators may securely
 255 access and update all electronic mail address and Internet
 256 identifier ~~instant message name~~ information.

257 (i) A sexual predator who intends to establish a
 258 permanent, temporary, or transient residence in another state or
 259 jurisdiction other than the State of Florida shall report in
 260 person to the sheriff of the county of current residence within
 261 48 hours before the date he or she intends to leave this state
 262 to establish residence in another state or jurisdiction or
 263 within 21 days before his or her planned departure date if the
 264 intended residence of 7 days or more is outside of the United
 265 States. The sexual predator must provide to the sheriff the
 266 address, municipality, county, ~~and~~ state, and country of
 267 intended residence. The sheriff shall promptly provide to the
 268 department the information received from the sexual predator.
 269 The department shall notify the statewide law enforcement
 270 agency, or a comparable agency, in the intended state, ~~or~~
 271 jurisdiction, or country of residence of the sexual predator's
 272 intended residence. The failure of a sexual predator to provide
 273 his or her intended place of residence is punishable as provided
 274 in subsection (10).

275 (j) A sexual predator who indicates his or her intent to
 276 establish a permanent, temporary, or transient residence in
 277 another state, a ~~or~~ jurisdiction other than the State of
 278 Florida, or another country and later decides to remain in this
 279 state shall, within 48 hours after the date upon which the
 280 sexual predator indicated he or she would leave this state,

281 | report in person to the sheriff to which the sexual predator
 282 | reported the intended change of residence, and report his or her
 283 | intent to remain in this state. If the sheriff is notified by
 284 | the sexual predator that he or she intends to remain in this
 285 | state, the sheriff shall promptly report this information to the
 286 | department. A sexual predator who reports his or her intent to
 287 | establish a permanent, temporary, or transient residence in
 288 | another state, a ~~ex~~ jurisdiction other than the State of
 289 | Florida, or another country, but who remains in this state
 290 | without reporting to the sheriff in the manner required by this
 291 | paragraph, commits a felony of the second degree, punishable as
 292 | provided in s. 775.082, s. 775.083, or s. 775.084.

293 | (8) VERIFICATION.—The department and the Department of
 294 | Corrections shall implement a system for verifying the addresses
 295 | of sexual predators. The system must be consistent with the
 296 | provisions of the federal Adam Walsh Child Protection and Safety
 297 | Act of 2006 and any other federal standards applicable to such
 298 | verification or required to be met as a condition for the
 299 | receipt of federal funds by the state. The Department of
 300 | Corrections shall verify the addresses of sexual predators who
 301 | are not incarcerated but who reside in the community under the
 302 | supervision of the Department of Corrections and shall report to
 303 | the department any failure by a sexual predator to comply with
 304 | registration requirements. County and local law enforcement
 305 | agencies, in conjunction with the department, shall verify the
 306 | addresses of sexual predators who are not under the care,
 307 | custody, control, or supervision of the Department of
 308 | Corrections. Local law enforcement agencies shall report to the

309 department any failure by a sexual predator to comply with
 310 registration requirements.

311 (a) A sexual predator must report in person each year
 312 during the month of the sexual predator's birthday and during
 313 every third month thereafter to the sheriff's office in the
 314 county in which he or she resides or is otherwise located to
 315 reregister. The sheriff's office may determine the appropriate
 316 times and days for reporting by the sexual predator, which shall
 317 be consistent with the reporting requirements of this paragraph.
 318 Reregistration shall include any changes to the following
 319 information:

320 1. Name; social security number; age; race; sex; date of
 321 birth; height; weight; hair and eye color; address of any
 322 permanent residence and address of any current temporary
 323 residence, within the state or out of state, including a rural
 324 route address and a post office box; if no permanent or
 325 temporary address, any transient residence within the state;
 326 address, location or description, and dates of any current or
 327 known future temporary residence within the state or out of
 328 state; all ~~any~~ electronic mail addresses ~~address~~ and all
 329 Internet identifiers ~~any instant message name~~ required to be
 330 provided pursuant to subparagraph (6)(g)4.; all home telephone
 331 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date
 332 and place of any employment; vehicle make, model, color, and
 333 license tag number; fingerprints; and photograph. A post office
 334 box shall not be provided in lieu of a physical residential
 335 address. The sexual predator must also produce or provide
 336 information about his or her passport, if he or she has a

337 passport, and, if he or she is an alien, must produce or provide
 338 information about documents establishing his or her immigration
 339 status.

340 2. If the sexual predator is enrolled, employed, or
 341 carrying on a vocation at an institution of higher education in
 342 this state, the sexual predator shall also provide to the
 343 department the name, address, and county of each institution,
 344 including each campus attended, and the sexual predator's
 345 enrollment or employment status.

346 3. If the sexual predator's place of residence is a motor
 347 vehicle, trailer, mobile home, or manufactured home, as defined
 348 in chapter 320, the sexual predator shall also provide the
 349 vehicle identification number; the license tag number; the
 350 registration number; and a description, including color scheme,
 351 of the motor vehicle, trailer, mobile home, or manufactured
 352 home. If the sexual predator's place of residence is a vessel,
 353 live-aboard vessel, or houseboat, as defined in chapter 327, the
 354 sexual predator shall also provide the hull identification
 355 number; the manufacturer's serial number; the name of the
 356 vessel, live-aboard vessel, or houseboat; the registration
 357 number; and a description, including color scheme, of the
 358 vessel, live-aboard vessel, or houseboat.

359 (10) PENALTIES.—

360 (a) Except as otherwise specifically provided, a sexual
 361 predator who fails to register; who fails, after registration,
 362 to maintain, acquire, or renew a driver ~~driver's~~ license or
 363 identification card; who fails to provide required location
 364 information, electronic mail address information, Internet

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365 identifier ~~instant message name~~ information, all home telephone
 366 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~, or
 367 change-of-name information; who fails to make a required report
 368 in connection with vacating a permanent residence; who fails to
 369 reregister as required; who fails to respond to any address
 370 verification correspondence from the department within 3 weeks
 371 of the date of the correspondence; or who otherwise fails, by
 372 act or omission, to comply with the requirements of this
 373 section, commits a felony of the third degree, punishable as
 374 provided in s. 775.082, s. 775.083, or s. 775.084.

375 Section 2. Paragraphs (a) and (g) of subsection (1),
 376 subsection (2), paragraphs (a) and (d) of subsection (4),
 377 subsections (7) and (8), and paragraph (c) of subsection (14) of
 378 section 943.0435, Florida Statutes, are amended to read:

379 943.0435 Sexual offenders required to register with the
 380 department; penalty.—

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

382 (a)1. "Sexual offender" means a person who meets the
 383 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 384 subparagraph c., or sub-subparagraph d., as follows:

385 a.(I) Has been convicted of committing, or attempting,
 386 soliciting, or conspiring to commit, any of the criminal
 387 offenses proscribed in the following statutes in this state or
 388 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 389 or s. 787.025(2)(c), where the victim is a minor and the
 390 defendant is not the victim's parent or guardian; s. 794.011,
 391 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
 392 800.04; s. 825.1025; s. 826.04 where the victim is a minor and

393 | the defendant is 18 years of age or older; s. 827.071; s.
 394 | 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 395 | 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
 396 | committed in this state which has been redesignated from a
 397 | former statute number to one of those listed in this sub-sub-
 398 | subparagraph; and

399 | (II) Has been released on or after October 1, 1997, from
 400 | the sanction imposed for any conviction of an offense described
 401 | in sub-sub-subparagraph (I). For purposes of sub-sub-
 402 | subparagraph (I), a sanction imposed in this state or in any
 403 | other jurisdiction includes, but is not limited to, a fine,
 404 | probation, community control, parole, conditional release,
 405 | control release, or incarceration in a state prison, federal
 406 | prison, private correctional facility, or local detention
 407 | facility;

408 | b. Establishes or maintains a residence in this state and
 409 | who has not been designated as a sexual predator by a court of
 410 | this state but who has been designated as a sexual predator, as
 411 | a sexually violent predator, or by another sexual offender
 412 | designation in another state or jurisdiction and was, as a
 413 | result of such designation, subjected to registration or
 414 | community or public notification, or both, or would be if the
 415 | person were a resident of that state or jurisdiction, without
 416 | regard to whether the person otherwise meets the criteria for
 417 | registration as a sexual offender;

418 | c. Establishes or maintains a residence in this state who
 419 | is in the custody or control of, or under the supervision of,
 420 | any other state or jurisdiction as a result of a conviction for

421 committing, or attempting, soliciting, or conspiring to commit,
 422 any of the criminal offenses proscribed in the following
 423 statutes or similar offense in another jurisdiction: s. 787.01,
 424 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 425 the defendant is not the victim's parent or guardian; s.
 426 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 427 796.035; s. 800.04; s. 825.1025; s. 826.04 where the victim is a
 428 minor and the defendant is 18 years of age or older; s. 827.071;
 429 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;
 430 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
 431 offense committed in this state which has been redesignated from
 432 a former statute number to one of those listed in this sub-
 433 subparagraph; or

434 d. On or after July 1, 2007, has been adjudicated
 435 delinquent for committing, or attempting, soliciting, or
 436 conspiring to commit, any of the criminal offenses proscribed in
 437 the following statutes in this state or similar offenses in
 438 another jurisdiction when the juvenile was 14 years of age or
 439 older at the time of the offense:

- 440 (I) Section 794.011, excluding s. 794.011(10);
- 441 (II) Section 800.04(4)(b) where the victim is under 12
 442 years of age or where the court finds sexual activity by the use
 443 of force or coercion;
- 444 (III) Section 800.04(5)(c)1. where the court finds
 445 molestation involving unclothed genitals; or
- 446 (IV) Section 800.04(5)(d) where the court finds the use of
 447 force or coercion and unclothed genitals.

448 2. For all qualifying offenses listed in sub-subparagraph

449 (1)(a)1.d., the court shall make a written finding of the age of
 450 the offender at the time of the offense.

451
 452 For each violation of a qualifying offense listed in this
 453 subsection, the court shall make a written finding of the age of
 454 the victim at the time of the offense. For a violation of s.
 455 800.04(4), the court shall additionally make a written finding
 456 indicating that the offense did or did not involve sexual
 457 activity and indicating that the offense did or did not involve
 458 force or coercion. For a violation of s. 800.04(5), the court
 459 shall additionally make a written finding that the offense did
 460 or did not involve unclothed genitals or genital area and that
 461 the offense did or did not involve the use of force or coercion.

462 (g) "Internet identifier Instant message name" has the
 463 same meaning as provided in s. 775.21 ~~means an identifier that~~
 464 ~~allows a person to communicate in real time with another person~~
 465 ~~using the Internet.~~

466 (2) A sexual offender shall:

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

468 1. In the county in which the offender establishes or
 469 maintains a permanent, temporary, or transient residence within
 470 48 hours after:

471 a. Establishing permanent, temporary, or transient
 472 residence in this state; or

473 b. Being released from the custody, control, or
 474 supervision of the Department of Corrections or from the custody
 475 of a private correctional facility; or

476 2. In the county where he or she was convicted within 48

477 | hours after being convicted for a qualifying offense for
 478 | registration under this section if the offender is not in the
 479 | custody or control of, or under the supervision of, the
 480 | Department of Corrections, or is not in the custody of a private
 481 | correctional facility.

482 |

483 | Any change in the information required to be provided pursuant
 484 | to paragraph (b), including, but not limited to, any change in
 485 | the sexual offender's permanent, temporary, or transient
 486 | residence, name, all ~~any~~ electronic mail addresses ~~address~~ and
 487 | all Internet identifiers ~~any instant message name~~ required to be
 488 | provided pursuant to paragraph (4)(d), after the sexual offender
 489 | reports in person at the sheriff's office, shall be accomplished
 490 | in the manner provided in subsections (4), (7), and (8).

491 | (b) Provide his or her name; date of birth; social
 492 | security number; race; sex; height; weight; hair and eye color;
 493 | tattoos or other identifying marks; occupation and place of
 494 | employment; address of permanent or legal residence or address
 495 | of any current temporary residence, within the state or out of
 496 | state, including a rural route address and a post office box; if
 497 | no permanent or temporary address, any transient residence
 498 | within the state, address, location or description, and dates of
 499 | any current or known future temporary residence within the state
 500 | or out of state; all home telephone numbers ~~number~~ and ~~any~~
 501 | cellular telephone numbers ~~number~~; all ~~any~~ electronic mail
 502 | addresses ~~address~~ and all Internet identifiers ~~any instant~~
 503 | ~~message name~~ required to be provided pursuant to paragraph
 504 | (4)(d); date and place of each conviction; and a brief

505 description of the crime or crimes committed by the offender. A
 506 post office box shall not be provided in lieu of a physical
 507 residential address. The sexual offender must also produce or
 508 provide information about his or her passport, if he or she has
 509 a passport, and, if he or she is an alien, must produce or
 510 provide information about documents establishing his or her
 511 immigration status.

512 1. If the sexual offender's place of residence is a motor
 513 vehicle, trailer, mobile home, or manufactured home, as defined
 514 in chapter 320, the sexual offender shall also provide to the
 515 department through the sheriff's office written notice of the
 516 vehicle identification number; the license tag number; the
 517 registration number; and a description, including color scheme,
 518 of the motor vehicle, trailer, mobile home, or manufactured
 519 home. If the sexual offender's place of residence is a vessel,
 520 live-aboard vessel, or houseboat, as defined in chapter 327, the
 521 sexual offender shall also provide to the department written
 522 notice of the hull identification number; the manufacturer's
 523 serial number; the name of the vessel, live-aboard vessel, or
 524 houseboat; the registration number; and a description, including
 525 color scheme, of the vessel, live-aboard vessel, or houseboat.

526 2. If the sexual offender is enrolled, employed, or
 527 carrying on a vocation at an institution of higher education in
 528 this state, the sexual offender shall also provide to the
 529 department through the sheriff's office the name, address, and
 530 county of each institution, including each campus attended, and
 531 the sexual offender's enrollment or employment status. Each
 532 change in enrollment or employment status shall be reported in

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533 | person at the sheriff's office, within 48 hours after any change
 534 | in status. The sheriff shall promptly notify each institution of
 535 | the sexual offender's presence and any change in the sexual
 536 | offender's enrollment or employment status.

537 |
 538 | When a sexual offender reports at the sheriff's office, the
 539 | sheriff shall take a photograph and a set of fingerprints of the
 540 | offender and forward the photographs and fingerprints to the
 541 | department, along with the information provided by the sexual
 542 | offender. The sheriff shall promptly provide to the department
 543 | the information received from the sexual offender.

544 | (4)(a) Each time a sexual offender's driver ~~driver's~~
 545 | license or identification card is subject to renewal, and,
 546 | without regard to the status of the offender's driver ~~driver's~~
 547 | license or identification card, within 48 hours after any change
 548 | in the offender's permanent, temporary, or transient residence
 549 | or change in the offender's name by reason of marriage or other
 550 | legal process, the offender shall report in person to a driver
 551 | ~~driver's~~ license office, and shall be subject to the
 552 | requirements specified in subsection (3). The Department of
 553 | Highway Safety and Motor Vehicles shall forward to the
 554 | department all photographs and information provided by sexual
 555 | offenders. Notwithstanding the restrictions set forth in s.
 556 | 322.142, the Department of Highway Safety and Motor Vehicles is
 557 | authorized to release a reproduction of a color-photograph or
 558 | digital-image license to the Department of Law Enforcement for
 559 | purposes of public notification of sexual offenders as provided
 560 | in this section and ss. 943.043 and 944.606. A sexual offender

561 who is unable to secure or update a driver license or
 562 identification card with the Department of Highway Safety and
 563 Motor Vehicles as provided in subsection (3) and this subsection
 564 must also report any change in the sexual offender's permanent,
 565 temporary, or transient residence or change in the offender's
 566 name by reason of marriage or other legal process within 48
 567 hours after the change to the sheriff's office in the county
 568 where the offender resides or is located and provide
 569 confirmation that he or she reported such information to
 570 Department of Highway Safety and Motor Vehicles.

571 (d) A sexual offender must register all ~~any~~ electronic
 572 mail addresses and Internet identifiers ~~address or instant~~
 573 ~~message name~~ with the department prior to using such electronic
 574 mail addresses and Internet identifiers ~~address or instant~~
 575 ~~message name on or after October 1, 2007~~. The department shall
 576 establish an online system through which sexual offenders may
 577 securely access and update all electronic mail address and
 578 Internet identifier ~~instant message name~~ information.

579 (7) A sexual offender who intends to establish a
 580 permanent, temporary, or transient residence in another state or
 581 jurisdiction other than the State of Florida shall report in
 582 person to the sheriff of the county of current residence within
 583 48 hours before the date he or she intends to leave this state
 584 to establish residence in another state or jurisdiction or
 585 within 21 days before his or her planned departure date if the
 586 intended residence of 7 days or more is outside of the United
 587 States. The notification must include the address, municipality,
 588 county, ~~and~~ state, and country of intended residence. The

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589 | sheriff shall promptly provide to the department the information
 590 | received from the sexual offender. The department shall notify
 591 | the statewide law enforcement agency, or a comparable agency, in
 592 | the intended state, or jurisdiction, or country of residence of
 593 | the sexual offender's intended residence. The failure of a
 594 | sexual offender to provide his or her intended place of
 595 | residence is punishable as provided in subsection (9).

596 | (8) A sexual offender who indicates his or her intent to
 597 | establish a permanent, temporary, or transient residence in
 598 | another state, a or jurisdiction other than the State of
 599 | Florida, or another country and later decides to remain in this
 600 | state shall, within 48 hours after the date upon which the
 601 | sexual offender indicated he or she would leave this state,
 602 | report in person to the sheriff to which the sexual offender
 603 | reported the intended change of permanent, temporary, or
 604 | transient residence, and report his or her intent to remain in
 605 | this state. The sheriff shall promptly report this information
 606 | to the department. A sexual offender who reports his or her
 607 | intent to establish a permanent, temporary, or transient
 608 | residence in another state, a or jurisdiction other than the
 609 | State of Florida, or another country but who remains in this
 610 | state without reporting to the sheriff in the manner required by
 611 | this subsection commits a felony of the second degree,
 612 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

613 | (14)

614 | (c) The sheriff's office may determine the appropriate
 615 | times and days for reporting by the sexual offender, which shall
 616 | be consistent with the reporting requirements of this

617 subsection. Reregistration shall include any changes to the
 618 following information:

619 1. Name; social security number; age; race; sex; date of
 620 birth; height; weight; hair and eye color; address of any
 621 permanent residence and address of any current temporary
 622 residence, within the state or out of state, including a rural
 623 route address and a post office box; if no permanent or
 624 temporary address, any transient residence within the state;
 625 address, location or description, and dates of any current or
 626 known future temporary residence within the state or out of
 627 state; all ~~any~~ electronic mail addresses ~~address~~ and all
 628 Internet identifiers ~~any instant message name~~ required to be
 629 provided pursuant to paragraph (4)(d); all home telephone
 630 numbers ~~number~~ and all ~~any~~ cellular telephone numbers ~~number~~;
 631 date and place of any employment; vehicle make, model, color,
 632 and license tag number; fingerprints; and photograph. A post
 633 office box shall not be provided in lieu of a physical
 634 residential address. The sexual offender must also produce or
 635 provide information about his or her passport, if he or she has
 636 a passport, and, if he or she is an alien, must produce or
 637 provide information about documents establishing his or her
 638 immigration status.

639 2. If the sexual offender is enrolled, employed, or
 640 carrying on a vocation at an institution of higher education in
 641 this state, the sexual offender shall also provide to the
 642 department the name, address, and county of each institution,
 643 including each campus attended, and the sexual offender's
 644 enrollment or employment status.

645 3. If the sexual offender's place of residence is a motor
 646 vehicle, trailer, mobile home, or manufactured home, as defined
 647 in chapter 320, the sexual offender shall also provide the
 648 vehicle identification number; the license tag number; the
 649 registration number; and a description, including color scheme,
 650 of the motor vehicle, trailer, mobile home, or manufactured
 651 home. If the sexual offender's place of residence is a vessel,
 652 live-aboard vessel, or houseboat, as defined in chapter 327, the
 653 sexual offender shall also provide the hull identification
 654 number; the manufacturer's serial number; the name of the
 655 vessel, live-aboard vessel, or houseboat; the registration
 656 number; and a description, including color scheme, of the
 657 vessel, live-aboard vessel or houseboat.

658 4. Any sexual offender who fails to report in person as
 659 required at the sheriff's office, or who fails to respond to any
 660 address verification correspondence from the department within 3
 661 weeks of the date of the correspondence or who fails to report
 662 all electronic mail addresses and all Internet identifiers ~~or~~
 663 ~~instant message names~~, commits a felony of the third degree,
 664 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

665 Section 3. Section 943.04351, Florida Statutes, is amended
 666 to read:

667 943.04351 Search of registration information regarding
 668 sexual predators and sexual offenders required prior to
 669 appointment or employment.—A state agency or governmental
 670 subdivision, prior to making any decision to appoint or employ a
 671 person to work, whether for compensation or as a volunteer, at
 672 any park, playground, day care center, or other place where

673 children regularly congregate, must conduct a search of that
 674 person's name or other identifying information against the
 675 registration information regarding sexual predators and sexual
 676 offenders maintained by the Department of Law Enforcement under
 677 s. 943.043. The agency or governmental subdivision may conduct
 678 the search using the Internet site maintained by the Department
 679 of Law Enforcement. Also, a national search must be conducted
 680 through the Dru Sjodin National Sex Offender Public Website
 681 maintained by the United States Department of Justice. This
 682 section does not apply to those positions or appointments within
 683 a state agency or governmental subdivision for which a state and
 684 national criminal history background check is conducted.

685 Section 4. Section 943.04354, Florida Statutes, is amended
 686 to read:

687 943.04354 Removal of the requirement to register as a
 688 sexual offender or sexual predator in special circumstances.—

689 (1) For purposes of this section, a person shall be
 690 considered for removal of the requirement to register as a
 691 sexual offender or sexual predator only if the person:

692 (a) Was or will be convicted or adjudicated delinquent of
 693 a violation of s. 794.011, s. 800.04, s. 827.071, or s.
 694 847.0135(5) or the person committed a violation of s. 794.011,
 695 s. 800.04, s. 827.071, or s. 847.0135(5) for which adjudication
 696 of guilt was or will be withheld, and the person does not have
 697 any other conviction, adjudication of delinquency, or withhold
 698 of adjudication of guilt for a violation of s. 794.011, s.
 699 800.04, s. 827.071, or s. 847.0135(5);

700 (b) Is required to register as a sexual offender or sexual
 701 predator solely on the basis of this violation; and

702 (c) Is not more than 4 years older than the victim of this
 703 violation who was 13 ~~14~~ years of age or older but not more than
 704 18 ~~17~~ years of age at the time the person committed this
 705 violation.

706 (2) If a person meets the criteria in subsection (1) ~~and~~
 707 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
 708 ~~847.0135(5) was committed on or after July 1, 2007,~~ the person
 709 may move the court that will sentence or dispose of this
 710 violation to remove the requirement that the person register as
 711 a sexual offender or sexual predator. The person must allege in
 712 the motion that he or she meets the criteria in subsection (1)
 713 and that removal of the registration requirement will not
 714 conflict with federal law. The state attorney must be given
 715 notice of the motion at least 21 days before the date of
 716 sentencing or disposition of this violation and may present
 717 evidence in opposition to the requested relief or may otherwise
 718 demonstrate why the motion should be denied. At sentencing or
 719 disposition of this violation, the court shall rule on this
 720 motion and, if the court determines the person meets the
 721 criteria in subsection (1) and the removal of the registration
 722 requirement will not conflict with federal law, it may grant the
 723 motion and order the removal of the registration requirement. If
 724 the court denies the motion, the person is not authorized under
 725 this section to petition for removal of the registration
 726 requirement.

727 (3) (a) This subsection applies to a person who:

728 ~~1. Is not a person described in subsection (2) because the~~
 729 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
 730 ~~committed on or after July 1, 2007;~~

731 1.2. Is subject to registration as a sexual offender or
 732 sexual predator for a violation of s. 794.011, s. 800.04, or s.
 733 827.071; and

734 2.3. Meets the criteria in subsection (1).

735 (b) A person may petition the court in which the sentence
 736 or disposition for the violation of s. 794.011, s. 800.04, or s.
 737 827.071 occurred for removal of the requirement to register as a
 738 sexual offender or sexual predator. The person must allege in
 739 the petition that he or she meets the criteria in subsection (1)
 740 and removal of the registration requirement will not conflict
 741 with federal law. The state attorney must be given notice of the
 742 petition at least 21 days before the hearing on the petition and
 743 may present evidence in opposition to the requested relief or
 744 may otherwise demonstrate why the petition should be denied. The
 745 court shall rule on the petition and, if the court determines
 746 the person meets the criteria in subsection (1) and removal of
 747 the registration requirement will not conflict with federal law,
 748 it may grant the petition and order the removal of the
 749 registration requirement. If the court denies the petition, the
 750 person is not authorized under this section to file any further
 751 petition for removal of the registration requirement.

752 (4) If a person provides to the Department of Law
 753 Enforcement a certified copy of the court's order removing the
 754 requirement that the person register as a sexual offender or
 755 sexual predator for the violation of s. 794.011, s. 800.04, s.

756 | 827.071, or s. 847.0135(5), the registration requirement will
 757 | not apply to the person and the department shall remove all
 758 | information about the person from the public registry of sexual
 759 | offenders and sexual predators maintained by the department.
 760 | However, the removal of this information from the public
 761 | registry does not mean that the public is denied access to
 762 | information about the person's criminal history or record that
 763 | is otherwise available as a public record.

764 | Section 5. Subsection (2) and paragraph (a) of subsection
 765 | (3) of section 943.0437, Florida Statutes, are amended to read:

766 | 943.0437 Commercial social networking websites.-

767 | (2) The department may provide information relating to
 768 | electronic mail addresses and Internet identifiers ~~instant~~
 769 | ~~message names~~ maintained as part of the sexual offender registry
 770 | to commercial social networking websites or third parties
 771 | designated by commercial social networking websites. The
 772 | commercial social networking website may use this information
 773 | for the purpose of comparing registered users and screening
 774 | potential users of the commercial social networking website
 775 | against the list of electronic mail addresses and Internet
 776 | identifiers ~~instant message names~~ provided by the department.

777 | (3) This section shall not be construed to impose any
 778 | civil liability on a commercial social networking website for:

779 | (a) Any action voluntarily taken in good faith to remove
 780 | or disable any profile of a registered user associated with an
 781 | electronic mail address or Internet identifier ~~instant message~~
 782 | ~~name~~ contained in the sexual offender registry.

783 | Section 6. Paragraphs (b) and (d) of subsection (1) and

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784 paragraph (a) of subsection (3) of section 944.606, Florida
 785 Statutes, are amended to read:

786 944.606 Sexual offenders; notification upon release.—

787 (1) As used in this section:

788 (b) "Sexual offender" means a person who has been
 789 convicted of committing, or attempting, soliciting, or
 790 conspiring to commit, any of the criminal offenses proscribed in
 791 the following statutes in this state or similar offenses in
 792 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 793 where the victim is a minor and the defendant is not the
 794 victim's parent or guardian; s. 794.011, excluding s.
 795 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 796 825.1025; s. 826.04 where the victim is a minor and the
 797 defendant is 18 years of age or older; s. 827.071; s. 847.0133;
 798 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
 799 s. 847.0145; or s. 985.701(1); or any similar offense committed
 800 in this state which has been redesignated from a former statute
 801 number to one of those listed in this subsection, when the
 802 department has received verified information regarding such
 803 conviction; an offender's computerized criminal history record
 804 is not, in and of itself, verified information.

805 (d) "Internet identifier ~~Instant message name~~" has the
 806 same meaning as provided in s. 775.21 ~~means an identifier that~~
 807 ~~allows a person to communicate in real time with another person~~
 808 ~~using the Internet.~~

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

812 | 1. The department must provide: the sexual offender's
 813 | name, any change in the offender's name by reason of marriage or
 814 | other legal process, and any alias, if known; the correctional
 815 | facility from which the sexual offender is released; the sexual
 816 | offender's social security number, race, sex, date of birth,
 817 | height, weight, and hair and eye color; address of any planned
 818 | permanent residence or temporary residence, within the state or
 819 | out of state, including a rural route address and a post office
 820 | box; if no permanent or temporary address, any transient
 821 | residence within the state; address, location or description,
 822 | and dates of any known future temporary residence within the
 823 | state or out of state; date and county of sentence and each
 824 | crime for which the offender was sentenced; a copy of the
 825 | offender's fingerprints and a digitized photograph taken within
 826 | 60 days before release; the date of release of the sexual
 827 | offender; all ~~any~~ electronic mail addresses ~~address~~ and all
 828 | Internet identifiers ~~any instant message name~~ required to be
 829 | provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone
 830 | numbers ~~number~~ and ~~any~~ cellular telephone numbers; and passport
 831 | information, if he or she has a passport, and, if he or she is
 832 | an alien, information about documents establishing his or her
 833 | immigration status ~~number~~. The department shall notify the
 834 | Department of Law Enforcement if the sexual offender escapes,
 835 | absconds, or dies. If the sexual offender is in the custody of a
 836 | private correctional facility, the facility shall take the
 837 | digitized photograph of the sexual offender within 60 days
 838 | before the sexual offender's release and provide this photograph
 839 | to the Department of Corrections and also place it in the sexual

840 offender's file. If the sexual offender is in the custody of a
 841 local jail, the custodian of the local jail shall register the
 842 offender within 3 business days after intake of the offender for
 843 any reason and upon release, and shall notify the Department of
 844 Law Enforcement of the sexual offender's release and provide to
 845 the Department of Law Enforcement the information specified in
 846 this paragraph and any information specified in subparagraph 2.
 847 that the Department of Law Enforcement requests.

848 2. The department may provide any other information deemed
 849 necessary, including criminal and corrections records,
 850 nonprivileged personnel and treatment records, when available.

851 Section 7. Paragraphs (a) and (f) of subsection (1),
 852 paragraph (a) of subsection (4), paragraph (b) of subsection
 853 (6), and paragraph (c) of subsection (13) of section 944.607,
 854 Florida Statutes, are amended to read:

855 944.607 Notification to Department of Law Enforcement of
 856 information on sexual offenders.-

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

858 (a) "Sexual offender" means a person who is in the custody
 859 or control of, or under the supervision of, the department or is
 860 in the custody of a private correctional facility:

861 1. On or after October 1, 1997, as a result of a
 862 conviction for committing, or attempting, soliciting, or
 863 conspiring to commit, any of the criminal offenses proscribed in
 864 the following statutes in this state or similar offenses in
 865 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 866 where the victim is a minor and the defendant is not the
 867 victim's parent or guardian; s. 794.011, excluding s.

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868 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 869 825.1025; s. 826.04 where the victim is a minor and the
 870 defendant is 18 years of age or older; s. 827.071; s. 847.0133;
 871 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
 872 s. 847.0145; or s. 985.701(1); or any similar offense committed
 873 in this state which has been redesignated from a former statute
 874 number to one of those listed in this paragraph; or

875 2. Who establishes or maintains a residence in this state
 876 and who has not been designated as a sexual predator by a court
 877 of this state but who has been designated as a sexual predator,
 878 as a sexually violent predator, or by another sexual offender
 879 designation in another state or jurisdiction and was, as a
 880 result of such designation, subjected to registration or
 881 community or public notification, or both, or would be if the
 882 person were a resident of that state or jurisdiction, without
 883 regard as to whether the person otherwise meets the criteria for
 884 registration as a sexual offender.

885 (f) "Internet identifier ~~Instant message name~~" has the
 886 same meaning as provided in s. 775.21 ~~means an identifier that~~
 887 ~~allows a person to communicate in real time with another person~~
 888 ~~using the Internet.~~

889 (4) A sexual offender, as described in this section, who
 890 is under the supervision of the Department of Corrections but is
 891 not incarcerated must register with the Department of
 892 Corrections within 3 business days after sentencing for a
 893 registrable offense and otherwise provide information as
 894 required by this subsection.

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

896 | date of birth; social security number; race; sex; height;
 897 | weight; hair and eye color; tattoos or other identifying marks;
 898 | all any electronic mail addresses ~~address~~ and all Internet
 899 | identifiers ~~any instant message name~~ required to be provided
 900 | pursuant to s. 943.0435(4)(d); permanent or legal residence and
 901 | address of temporary residence within the state or out of state
 902 | while the sexual offender is under supervision in this state,
 903 | including any rural route address or post office box; if no
 904 | permanent or temporary address, any transient residence within
 905 | the state; and address, location or description, and dates of
 906 | any current or known future temporary residence within the state
 907 | or out of state. The sexual offender must also produce or
 908 | provide information about his or her passport, if he or she has
 909 | a passport, and, if he or she is an alien, must produce or
 910 | provide information about documents establishing his or her
 911 | immigration status. The Department of Corrections shall verify
 912 | the address of each sexual offender in the manner described in
 913 | ss. 775.21 and 943.0435. The department shall report to the
 914 | Department of Law Enforcement any failure by a sexual predator
 915 | or sexual offender to comply with registration requirements.

916 | (6) The information provided to the Department of Law
 917 | Enforcement must include:

918 | (b) The sexual offender's most current address, place of
 919 | permanent, temporary, or transient residence within the state or
 920 | out of state, and address, location or description, and dates of
 921 | any current or known future temporary residence within the state
 922 | or out of state, while the sexual offender is under supervision
 923 | in this state, including the name of the county or municipality

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924 | in which the offender permanently or temporarily resides, or has
 925 | a transient residence, and address, location or description, and
 926 | dates of any current or known future temporary residence within
 927 | the state or out of state, and, if known, the intended place of
 928 | permanent, temporary, or transient residence, and address,
 929 | location or description, and dates of any current or known
 930 | future temporary residence within the state or out of state upon
 931 | satisfaction of all sanctions. The sexual offender must also
 932 | produce or provide information about his or her passport, if he
 933 | or she has a passport, and, if he or she is an alien, must
 934 | produce or provide information about documents establishing his
 935 | or her immigration status;

936 |
 937 | If any information provided by the department changes during the
 938 | time the sexual offender is under the department's control,
 939 | custody, or supervision, including any change in the offender's
 940 | name by reason of marriage or other legal process, the
 941 | department shall, in a timely manner, update the information and
 942 | provide it to the Department of Law Enforcement in the manner
 943 | prescribed in subsection (2).

944 | (13)

945 | (c) The sheriff's office may determine the appropriate
 946 | times and days for reporting by the sexual offender, which shall
 947 | be consistent with the reporting requirements of this
 948 | subsection. Reregistration shall include any changes to the
 949 | following information:

- 950 | 1. Name; social security number; age; race; sex; date of
 951 | birth; height; weight; hair and eye color; address of any

952 permanent residence and address of any current temporary
 953 residence, within the state or out of state, including a rural
 954 route address and a post office box; if no permanent or
 955 temporary address, any transient residence; address, location or
 956 description, and dates of any current or known future temporary
 957 residence within the state or out of state; all ~~any~~ electronic
 958 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~
 959 ~~message name~~ required to be provided pursuant to s.
 960 943.0435(4)(d); date and place of any employment; vehicle make,
 961 model, color, and license tag number; fingerprints; and
 962 photograph. A post office box shall not be provided in lieu of a
 963 physical residential address. The sexual offender must also
 964 produce or provide information about his or her passport, if he
 965 or she has a passport, and, if he or she is an alien, must
 966 produce or provide information about documents establishing his
 967 or her immigration status.

968 2. If the sexual offender is enrolled, employed, or
 969 carrying on a vocation at an institution of higher education in
 970 this state, the sexual offender shall also provide to the
 971 department the name, address, and county of each institution,
 972 including each campus attended, and the sexual offender's
 973 enrollment or employment status.

974 3. If the sexual offender's place of residence is a motor
 975 vehicle, trailer, mobile home, or manufactured home, as defined
 976 in chapter 320, the sexual offender shall also provide the
 977 vehicle identification number; the license tag number; the
 978 registration number; and a description, including color scheme,
 979 of the motor vehicle, trailer, mobile home, or manufactured

980 home. If the sexual offender's place of residence is a vessel,
 981 live-aboard vessel, or houseboat, as defined in chapter 327, the
 982 sexual offender shall also provide the hull identification
 983 number; the manufacturer's serial number; the name of the
 984 vessel, live-aboard vessel, or houseboat; the registration
 985 number; and a description, including color scheme, of the
 986 vessel, live-aboard vessel or houseboat.

987 4. Any sexual offender who fails to report in person as
 988 required at the sheriff's office, or who fails to respond to any
 989 address verification correspondence from the department within 3
 990 weeks of the date of the correspondence, or who fails to report
 991 all electronic mail addresses and all Internet identifiers ~~or~~
 992 ~~instant message names~~, commits a felony of the third degree,
 993 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

994 Section 8. Subsection (11) of section 947.005, Florida
 995 Statutes, is amended to read:

996 947.005 Definitions.—As used in this chapter, unless the
 997 context clearly indicates otherwise:

998 (11) "Risk assessment" means an assessment completed by a
 999 ~~an independent~~ qualified practitioner to evaluate the level of
 1000 risk associated when a sex offender has contact with a child.

1001 Section 9. Subsection (13) is added to section 947.1405,
 1002 Florida Statutes, to read:

1003 947.1405 Conditional release program.—

1004 (13) In addition to all other conditions imposed, for a
 1005 releasee who is subject to conditional release for a crime that
 1006 was committed on or after July 1, 2012, and who has been
 1007 convicted at any time of a violation of s. 800.04(7)(b) or s.

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1008 | 847.0135, or a similar offense in another jurisdiction, the
 1009 | commission must order electronic monitoring for the duration of
 1010 | the releasee's supervision.

1011 | Section 10. Subsection (3) of section 948.30, Florida
 1012 | Statutes, is amended, and subsection (5) is added to that
 1013 | section, to read:

1014 | 948.30 Additional terms and conditions of probation or
 1015 | community control for certain sex offenses.—Conditions imposed
 1016 | pursuant to this section do not require oral pronouncement at
 1017 | the time of sentencing and shall be considered standard
 1018 | conditions of probation or community control for offenders
 1019 | specified in this section.

1020 | (3) Effective for a probationer or community controllee
 1021 | whose crime was committed on or after September 1, 2005, and
 1022 | who:

1023 | (a) Is placed on probation or community control for a
 1024 | violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,
 1025 | or s. 847.0145 and the unlawful sexual activity involved a
 1026 | victim 15 years of age or younger and the offender is 18 years
 1027 | of age or older;

1028 | (b) Is designated a sexual predator pursuant to s. 775.21
 1029 | or a similar designation in another jurisdiction; or

1030 | (c) Has previously been convicted of a violation of
 1031 | chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.
 1032 | 847.0145 or a similar offense in another jurisdiction and the
 1033 | unlawful sexual activity involved a victim 15 years of age or
 1034 | younger and the offender is 18 years of age or older,
 1035 |

1036 the court must order, in addition to any other provision of this
 1037 section, mandatory electronic monitoring as a condition of the
 1038 probation or community control supervision.

1039 (5) Effective for a probationer or community controllee
 1040 whose crime was committed on or after July 1, 2012, and who:

1041 (a)1. Is placed on probation or community control for a
 1042 violation of s. 800.04(7)(b) or s. 847.0135; or

1043 2. Has previously been convicted of a violation of s.
 1044 800.04(7)(b) or s. 847.0135, or a similar offense in another
 1045 jurisdiction,

1046

1047 the court must order, in addition to any other requirements of
 1048 this section, mandatory electronic monitoring as a condition of
 1049 the probation or community control supervision.

1050 (b) Is placed on probation or community control for a
 1051 violation of s. 847.0135(3) or (4), the court shall subject the
 1052 probationer or community controllee to the requirements of
 1053 subsections (1) and (2).

1054 Section 11. Section 948.31, Florida Statutes, is amended
 1055 to read:

1056 948.31 Evaluation and treatment of sexual predators and
 1057 offenders on probation or community control.—Conditions imposed
 1058 pursuant to this section do not require oral pronouncement at
 1059 the time of sentencing and shall be considered standard
 1060 conditions of probation or community control for offenders
 1061 specified in this section.

1062 (1) The court shall require an evaluation by a qualified
 1063 practitioner ~~to determine the need of a probationer or community~~

1064 ~~controllee for treatment. If the court determines that a need~~
 1065 ~~therefor is established by the evaluation process, the court~~
 1066 ~~shall require sexual offender treatment as a term or condition~~
 1067 ~~of probation or community control~~ for any person who is required
 1068 to register as a sexual predator under s. 775.21 or sexual
 1069 offender under s. 943.0435, s. 944.606, or s. 944.607 to
 1070 determine the need of the probationer or community controllee
 1071 for sex offender treatment while on probation or community
 1072 control. The evaluation and recommendations for any treatment of
 1073 the probationer or community controllee shall be provided to the
 1074 court for review. Such treatment shall be required to be
 1075 ~~obtained from a qualified practitioner as defined in s. 948.001.~~

1076 (2) If the court determines that a need for treatment is
 1077 established by the evaluation process, the treatment must be
 1078 obtained from a qualified practitioner. The community controllee
 1079 or probationer must actively participate in and successfully
 1080 complete any recommended treatment. The court shall also require
 1081 the community controllee or probationer to comply with the
 1082 treatment program rules, which can include, but are not limited
 1083 to, a safety plan and polygraph examinations for treatment
 1084 purposes.

1085 (3) The court may, when it is recommended by a qualified
 1086 practitioner or the supervising probation officer, also restrict
 1087 the probationer or community controllee from having unsupervised
 1088 contact with a minor or prohibit him or her from residing with a
 1089 minor.

1090 (4) Treatment may not be administered by a qualified
 1091 practitioner who has been convicted or adjudicated delinquent of

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1092 committing, or attempting, soliciting, or conspiring to commit,
 1093 any offense that is listed in s. 943.0435(1)(a)1.a.(I). ~~The~~
 1094 ~~court shall impose a restriction against contact with minors if~~
 1095 ~~sexual offender treatment is recommended. The evaluation and~~
 1096 ~~recommendations for treatment of the probationer or community~~
 1097 ~~controllee shall be provided to the court for review.~~

1098 Section 12. Paragraph (a) of subsection (3) of section
 1099 985.481, Florida Statutes, is amended to read:

1100 985.481 Sexual offenders adjudicated delinquent;
 1101 notification upon release.—

1102 (3)(a) The department must provide information regarding
 1103 any sexual offender who is being released after serving a period
 1104 of residential commitment under the department for any offense,
 1105 as follows:

1106 1. The department must provide the sexual offender's name,
 1107 any change in the offender's name by reason of marriage or other
 1108 legal process, and any alias, if known; the correctional
 1109 facility from which the sexual offender is released; the sexual
 1110 offender's social security number, race, sex, date of birth,
 1111 height, weight, and hair and eye color; address of any planned
 1112 permanent residence or temporary residence, within the state or
 1113 out of state, including a rural route address and a post office
 1114 box; if no permanent or temporary address, any transient
 1115 residence within the state; address, location or description,
 1116 and dates of any known future temporary residence within the
 1117 state or out of state; date and county of disposition and each
 1118 crime for which there was a disposition; a copy of the
 1119 offender's fingerprints and a digitized photograph taken within

1120 | 60 days before release; the date of release of the sexual
 1121 | offender; all ~~and~~ home telephone numbers ~~number~~ and ~~any~~ cellular
 1122 | telephone numbers; and passport information, if he or she has a
 1123 | passport, and, if he or she is an alien, information about
 1124 | documents establishing his or her immigration status ~~number~~. The
 1125 | department shall notify the Department of Law Enforcement if the
 1126 | sexual offender escapes, absconds, or dies. If the sexual
 1127 | offender is in the custody of a private correctional facility,
 1128 | the facility shall take the digitized photograph of the sexual
 1129 | offender within 60 days before the sexual offender's release and
 1130 | also place it in the sexual offender's file. If the sexual
 1131 | offender is in the custody of a local jail, the custodian of the
 1132 | local jail shall register the offender within 3 business days
 1133 | after intake of the offender for any reason and upon release,
 1134 | and shall notify the Department of Law Enforcement of the sexual
 1135 | offender's release and provide to the Department of Law
 1136 | Enforcement the information specified in this subparagraph and
 1137 | any information specified in subparagraph 2. which the
 1138 | Department of Law Enforcement requests.

1139 | 2. The department may provide any other information
 1140 | considered necessary, including criminal and delinquency
 1141 | records, when available.

1142 | Section 13. Paragraph (a) of subsection (4), paragraph (a)
 1143 | of subsection (6), and paragraph (b) of subsection (13) of
 1144 | section 985.4815, Florida Statutes, are amended to read:

1145 | 985.4815 Notification to Department of Law Enforcement of
 1146 | information on juvenile sexual offenders.-

1147 (4) A sexual offender, as described in this section, who
 1148 is under the supervision of the department but who is not
 1149 committed must register with the department within 3 business
 1150 days after adjudication and disposition for a registrable
 1151 offense and otherwise provide information as required by this
 1152 subsection.

1153 (a) The sexual offender shall provide his or her name;
 1154 date of birth; social security number; race; sex; height;
 1155 weight; hair and eye color; tattoos or other identifying marks;
 1156 permanent or legal residence and address of temporary residence
 1157 within the state or out of state while the sexual offender is in
 1158 the care or custody or under the jurisdiction or supervision of
 1159 the department in this state, including any rural route address
 1160 or post office box; if no permanent or temporary address, any
 1161 transient residence; address, location or description, and dates
 1162 of any current or known future temporary residence within the
 1163 state or out of state; passport information, if he or she has a
 1164 passport, and, if he or she is an alien, information about
 1165 documents establishing his or her immigration status; and the
 1166 name and address of each school attended. The department shall
 1167 verify the address of each sexual offender and shall report to
 1168 the Department of Law Enforcement any failure by a sexual
 1169 offender to comply with registration requirements.

1170 (6)(a) The information provided to the Department of Law
 1171 Enforcement must include the following:

1172 1. The information obtained from the sexual offender under
 1173 subsection (4).

1174 2. The sexual offender's most current address and place of
 1175 permanent, temporary, or transient residence within the state or
 1176 out of state, and address, location or description, and dates of
 1177 any current or known future temporary residence within the state
 1178 or out of state, while the sexual offender is in the care or
 1179 custody or under the jurisdiction or supervision of the
 1180 department in this state, including the name of the county or
 1181 municipality in which the offender permanently or temporarily
 1182 resides, or has a transient residence, and address, location or
 1183 description, and dates of any current or known future temporary
 1184 residence within the state or out of state; and, if known, the
 1185 intended place of permanent, temporary, or transient residence,
 1186 and address, location or description, and dates of any current
 1187 or known future temporary residence within the state or out of
 1188 state upon satisfaction of all sanctions. The sexual offender
 1189 must also produce or provide information about his or her
 1190 passport, if he or she has a passport, and, if he or she is an
 1191 alien, must produce or provide information about documents
 1192 establishing his or her immigration status.

1193 3. The legal status of the sexual offender and the
 1194 scheduled termination date of that legal status.

1195 4. The location of, and local telephone number for, any
 1196 department office that is responsible for supervising the sexual
 1197 offender.

1198 5. An indication of whether the victim of the offense that
 1199 resulted in the offender's status as a sexual offender was a
 1200 minor.

1201 6. The offense or offenses at adjudication and disposition
 1202 that resulted in the determination of the offender's status as a
 1203 sex offender.

1204 7. A digitized photograph of the sexual offender, which
 1205 must have been taken within 60 days before the offender was
 1206 released from the custody of the department or a private
 1207 correctional facility by expiration of sentence under s.
 1208 944.275, or within 60 days after the onset of the department's
 1209 supervision of any sexual offender who is on probation,
 1210 postcommitment probation, residential commitment, nonresidential
 1211 commitment, licensed child-caring commitment, community control,
 1212 conditional release, parole, provisional release, or control
 1213 release or who is supervised by the department under the
 1214 Interstate Compact Agreement for Probationers and Parolees. If
 1215 the sexual offender is in the custody of a private correctional
 1216 facility, the facility shall take a digitized photograph of the
 1217 sexual offender within the time period provided in this
 1218 subparagraph and shall provide the photograph to the department.

1219 (13)

1220 (b) The sheriff's office may determine the appropriate
 1221 times and days for reporting by the sexual offender, which shall
 1222 be consistent with the reporting requirements of this
 1223 subsection. Reregistration shall include any changes to the
 1224 following information:

1225 1. Name; social security number; age; race; sex; date of
 1226 birth; height; weight; hair and eye color; address of any
 1227 permanent residence and address of any current temporary
 1228 residence, within the state or out of state, including a rural

1229 route address and a post office box; if no permanent or
 1230 temporary address, any transient residence; address, location or
 1231 description, and dates of any current or known future temporary
 1232 residence within the state or out of state; passport
 1233 information, if he or she has a passport, and, if he or she is
 1234 an alien, information about documents establishing his or her
 1235 immigration status; name and address of each school attended;
 1236 date and place of any employment; vehicle make, model, color,
 1237 and license tag number; fingerprints; and photograph. A post
 1238 office box shall not be provided in lieu of a physical
 1239 residential address.

1240 2. If the sexual offender is enrolled, employed, or
 1241 carrying on a vocation at an institution of higher education in
 1242 this state, the sexual offender shall also provide to the
 1243 department the name, address, and county of each institution,
 1244 including each campus attended, and the sexual offender's
 1245 enrollment or employment status.

1246 3. If the sexual offender's place of residence is a motor
 1247 vehicle, trailer, mobile home, or manufactured home, as defined
 1248 in chapter 320, the sexual offender shall also provide the
 1249 vehicle identification number; the license tag number; the
 1250 registration number; and a description, including color scheme,
 1251 of the motor vehicle, trailer, mobile home, or manufactured
 1252 home. If the sexual offender's place of residence is a vessel,
 1253 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1254 sexual offender shall also provide the hull identification
 1255 number; the manufacturer's serial number; the name of the
 1256 vessel, live-aboard vessel, or houseboat; the registration

1257 | number; and a description, including color scheme, of the
 1258 | vessel, live-aboard vessel, or houseboat.

1259 | 4. Any sexual offender who fails to report in person as
 1260 | required at the sheriff's office, or who fails to respond to any
 1261 | address verification correspondence from the department within 3
 1262 | weeks after the date of the correspondence, commits a felony of
 1263 | the third degree, punishable as provided in ss. 775.082,
 1264 | 775.083, and 775.084.

1265 | Section 14. Effective July 1, 2012, paragraphs (m) and (n)
 1266 | are added to subsection (2) of section 903.046, Florida
 1267 | Statutes, to read:

1268 | 903.046 Purpose of and criteria for bail determination.—

1269 | (2) When determining whether to release a defendant on
 1270 | bail or other conditions, and what that bail or those conditions
 1271 | may be, the court shall consider:

1272 | (m) Whether the defendant, other than a defendant whose
 1273 | only criminal charge is a misdemeanor offense under chapter 316,
 1274 | is required to register as a sexual offender under s. 943.0435;
 1275 | and, if so, he or she is not eligible for release on bail or
 1276 | surety bond until the first appearance on the case in order to
 1277 | ensure the full participation of the prosecutor and the
 1278 | protection of the public.

1279 | (n) Whether the defendant, other than a defendant whose
 1280 | only criminal charge is a misdemeanor offense under chapter 316,
 1281 | is required to register as a sexual predator under s. 775.21;
 1282 | and, if so, he or she is not eligible for release on bail or
 1283 | surety bond until the first appearance on the case in order to

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1284 ensure the full participation of the prosecutor and the
 1285 protection of the public.

1286 Section 15. Subsection (1) of section 948.012, Florida
 1287 Statutes, is amended to read:

1288 948.012 Split sentence of probation or community control
 1289 and imprisonment.—

1290 (1) Whenever punishment by imprisonment for a misdemeanor
 1291 or a felony, except for a capital felony, is prescribed, the
 1292 court, in its discretion, may, at the time of sentencing, impose
 1293 a split sentence whereby the defendant is to be placed on
 1294 probation or, with respect to any such felony, into community
 1295 control upon completion of any specified period of such sentence
 1296 which may include a term of years or less. In such case, the
 1297 court shall stay and withhold the imposition of the remainder of
 1298 sentence imposed upon the defendant and direct that the
 1299 defendant be placed upon probation or into community control
 1300 after serving such period as may be imposed by the court. The
 1301 period of probation or community control shall commence
 1302 immediately upon the release of the defendant from
 1303 incarceration, ~~whether by parole or gain-time allowances.~~

1304 Section 16. Section 948.039, Florida Statutes, is amended
 1305 to read:

1306 948.039 Special terms and conditions of probation or
 1307 community control imposed by court order.—The court may
 1308 determine any special terms and conditions of probation or
 1309 community control. The terms and conditions should be reasonably
 1310 related to the circumstances of the offense committed and
 1311 appropriate for the offender. The court shall impose the special

1312 terms and conditions by oral pronouncement at sentencing and
 1313 include the terms and conditions in the written sentencing
 1314 order. The probation or community control period shall commence
 1315 immediately upon the release of the offender from incarceration.

1316 Special terms and conditions may include, but are not limited
 1317 to, requirements that the offender:

1318 (1) Attend an HIV/AIDS awareness program consisting of a
 1319 class of not less than 2 hours or more than 4 hours in length,
 1320 if such a program is available in the county of the offender's
 1321 residence. The offender shall pay the cost of attending the
 1322 program.

1323 (2) Pay not more than \$1 per month during the term of
 1324 probation or community control to a nonprofit organization
 1325 established for the sole purpose of supplementing the
 1326 rehabilitative efforts of the Department of Corrections.

1327 Section 17. If any provision of this act or its
 1328 application to any person or circumstance is held invalid, the
 1329 invalidity does not affect other provisions or applications of
 1330 this act which can be given effect without the invalid provision
 1331 or application, and to this end the provisions of this act are
 1332 declared severable.

1333 Section 18. Except as otherwise expressly provided in this
 1334 act and except for this section, which shall take effect upon
 1335 this act becoming a law, this act shall take effect April 30,
 1336 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 497 Juvenile Expunction
SPONSOR(S): Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>ju</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days.

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as defined in s. 741.28, F.S.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.
- Submits a \$75 processing fee and necessary paperwork to FDLE within 6 months after completing the program.

Currently a juvenile with a felony arrest is not eligible for a juvenile diversion expunction under s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill provides a list of felony offenses that are ineligible for a juvenile diversion expunction.

The bill also allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

It appears the bill may have both a positive and negative fiscal impact on state government. See "fiscal section."

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Prearrest or Postarrest Diversion Programs

Juvenile diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.¹ These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.²

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days. If the juvenile fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.³

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a juvenile who successfully completes such a program pursuant to s. 943.0582, F.S.⁴

Juvenile Diversion Expunction

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge⁵ a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Submits an application for a juvenile diversion expunction, on a form prescribed by FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying.
- Submits the application for a juvenile diversion expunction no later than 6 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, and that participation in the program is strictly limited to juveniles arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.⁶

¹ "Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice.

² *Id.*

³ Section 985.125(2), F.S.

⁴ Section 985.125(3), F.S.

⁵ Section 943.0582(2), F.S., defines "Expunction" as the same meaning and effect as s. 943.0585, F.S., except that:

The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a juvenile whose record is expunged pursuant to this section is made available only to criminal justice agencies: for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines “nonviolent misdemeanor” as simple assault or battery when a juvenile diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the juvenile who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0585 and 943.059, F.S., if the juvenile is otherwise eligible under those sections.⁷

Effect of the Bill

As noted above, juveniles with felony arrests are not currently eligible for a juvenile diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies directly related to a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by public officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;⁸ or
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,⁹ without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.¹⁰

⁶ Section 741.28(2), F.S., defines “domestic violence” as “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.”

⁷ Section 943.0582(6), F.S.

⁸ Section 907.041(4)(a), F.S., provides the following list of offenses: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime.

The bill allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE is authorized to charge a \$75 processing fee for each request received for a juvenile diversion expunction.¹¹ FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in revenue.¹²

2. Expenditures:

FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in costs associated with workload.¹³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

⁹ Section 775.21, F.S., specifies the following offenses: (1) A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction: ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); and s. 847.0133, F.S. (protection of minors / obscenity).

¹⁰ Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

¹¹ Section 943.0585(4), F.S. This fee may be waived by the executive director.

¹² Florida Department of Law Enforcement. 2012 Analysis of HB 497.

¹³ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A juvenile applying for an expunction under s. 943.0582, F.S., will be required to pay a \$75 processing fee to FDLE.¹⁴

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.0582, F.S., provides FDLE rulemaking authority pursuant to ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 4-7 of the bill cite the Department of Corrections as having the authority to expunge nonjudicial arrest records of juveniles. However, FDLE is the only agency statutorily authorized to expunge or seal criminal history records.

Clarification may be needed on whether expunction eligibility is limited to a juvenile arrested for a single qualifying misdemeanor or a single qualifying felony, or whether multiple charges could be expunged if none "relate to a violation of" the specified offenses. As worded, it appears that eligibility would be limited to an arrest for a single charge.

FDLE reports that the addition of the felony criteria to lines 24-33 of the bill could prove problematic as diversion programs would only be able to accept participants with arrest records for some felonies but not others, under a literal reading of the law.¹⁵

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁴ *Supra* note 11.

¹⁵ *Id.*

1 A bill to be entitled
 2 An act relating to juvenile expunction; amending s.
 3 943.0582, F.S.; allowing minors who have certain
 4 felony arrests to have the Department of Corrections
 5 expunge their nonjudicial arrest record upon
 6 successful completion of a prearrest or postarrest
 7 diversion program; providing an effective date.

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

10
 11 Section 1. Paragraphs (c), (e), and (f) of subsection (3)
 12 of section 943.0582, Florida Statutes, are amended to read:

13 943.0582 Prearrest, postarrest, or teen court diversion
 14 program expunction.—

15 (3) The department shall expunge the nonjudicial arrest
 16 record of a minor who has successfully completed a prearrest or
 17 postarrest diversion program if that minor:

18 (c) Submits to the department, with the application, an
 19 official written statement from the state attorney for the
 20 county in which the arrest occurred certifying that he or she
 21 has successfully completed that county's prearrest or postarrest
 22 diversion program and that participation in the program is
 23 strictly limited to minors arrested for a nonviolent
 24 misdemeanor, or for a felony that does not relate to a violation
 25 of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
 26 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
 27 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 28 s. 916.1075, a violation enumerated in s. 907.041, or any

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29 violation specified as a predicate offense for registration as a
 30 sexual predator pursuant to s. 775.21, without regard to whether
 31 that offense alone is sufficient to require such registration,
 32 or for registration as a sexual offender pursuant to s.
 33 943.0435, who have not otherwise been charged with or found to
 34 have committed any criminal offense or comparable ordinance
 35 violation.

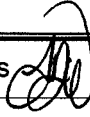
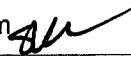
36 ~~(e) Participated in a prearrest or postarrest diversion~~
 37 ~~program based on an arrest for a nonviolent misdemeanor that~~
 38 ~~would not qualify as an act of domestic violence as that term is~~
 39 ~~defined in s. 741.28.~~

40 (e)-(f) Has never, prior to filing the application for
 41 expunction, been charged with or been found to have committed
 42 any criminal offense or comparable ordinance violation.

43 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 947 Possession of a Firearm or Destructive Device During Commission of an Offense
SPONSOR(S): Boyd
TIED BILLS: None IDEN./SIM. BILLS: SB 1272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams 	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:

- Murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in certain controlled substances; and possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence, and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof) and actually possessed a firearm or destructive device during the commission of such offense.

The bill may have a negative prison bed impact on the Department of Corrections and is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:¹

- Murder;
- Sexual battery;
- Robbery;
- Burglary;
- Arson;
- Aggravated assault;
- Aggravated battery;
- Kidnapping;
- Escape;
- Aircraft piracy;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.; and
- Possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.²

Effect of the Bill

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof)³ and actually possessed a firearm or destructive device during the commission of such offense.

¹ Section 790.001(6) and (4), F.S., defines the terms "firearm" and "destructive device."

² Section 775.087(2)(a)1., F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, because the bill expands the pool of persons subject to a 10-year minimum mandatory sentence, it may have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

³ Section 775.084(1)(b)1., F.S., provides the following list of felony offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; and aggravated stalking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to possession of a firearm or
 3 destructive device during the commission of an
 4 offense; amending s. 775.087, F.S.; providing that an
 5 exception to the 10-year minimum term for persons
 6 convicted of certain offenses during which the person
 7 actually possessed a firearm or destructive device
 8 does not to apply to offenders convicted for
 9 possession of a firearm by a felon who have certain
 10 prior convictions; providing an effective date.

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

13
 14 Section 1. Paragraph (a) of subsection (2) of section
 15 775.087, Florida Statutes, is amended to read:

16 775.087 Possession or use of weapon; aggravated battery;
 17 felony reclassification; minimum sentence.—

18 (2)(a)1. Any person who is convicted of a felony or an
 19 attempt to commit a felony, regardless of whether the use of a
 20 weapon is an element of the felony, and the conviction was for:

- 21 a. Murder;
- 22 b. Sexual battery;
- 23 c. Robbery;
- 24 d. Burglary;
- 25 e. Arson;
- 26 f. Aggravated assault;
- 27 g. Aggravated battery;
- 28 h. Kidnapping;

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- 29 i. Escape;
- 30 j. Aircraft piracy;
- 31 k. Aggravated child abuse;
- 32 l. Aggravated abuse of an elderly person or disabled
- 33 adult;
- 34 m. Unlawful throwing, placing, or discharging of a
- 35 destructive device or bomb;
- 36 n. Carjacking;
- 37 o. Home-invasion robbery;
- 38 p. Aggravated stalking;
- 39 q. Trafficking in cannabis, trafficking in cocaine,
- 40 capital importation of cocaine, trafficking in illegal drugs,
- 41 capital importation of illegal drugs, trafficking in
- 42 phencyclidine, capital importation of phencyclidine, trafficking
- 43 in methaqualone, capital importation of methaqualone,
- 44 trafficking in amphetamine, capital importation of amphetamine,
- 45 trafficking in flunitrazepam, trafficking in gamma-
- 46 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
- 47 trafficking in Phenethylamines, or other violation of s.
- 48 893.135(1); or
- 49 r. Possession of a firearm by a felon

50
 51 and during the commission of the offense, such person actually
 52 possessed a "firearm" or "destructive device" as those terms are
 53 defined in s. 790.001, shall be sentenced to a minimum term of
 54 imprisonment of 10 years, except that a person who is convicted
 55 for aggravated assault, possession of a firearm by a felon, or
 56 burglary of a conveyance shall be sentenced to a minimum term of

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57 | imprisonment of 3 years if such person possessed a "firearm" or
 58 | "destructive device" during the commission of the offense unless
 59 | such a person convicted for possession of a firearm by a felon
 60 | has a previous conviction of a felony or an attempt to commit a
 61 | felony listed in s. 775.084(1)(b)1. and actually possessed a
 62 | "firearm" or "destructive device" during the commission of that
 63 | offense.


64 | 2. Any person who is convicted of a felony or an attempt
 65 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,
 66 | regardless of whether the use of a weapon is an element of the
 67 | felony, and during the course of the commission of the felony
 68 | such person discharged a "firearm" or "destructive device" as
 69 | defined in s. 790.001 shall be sentenced to a minimum term of
 70 | imprisonment of 20 years.

71 | 3. Any person who is convicted of a felony or an attempt
 72 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,
 73 | regardless of whether the use of a weapon is an element of the
 74 | felony, and during the course of the commission of the felony
 75 | such person discharged a "firearm" or "destructive device" as
 76 | defined in s. 790.001 and, as the result of the discharge, death
 77 | or great bodily harm was inflicted upon any person, the
 78 | convicted person shall be sentenced to a minimum term of
 79 | imprisonment of not less than 25 years and not more than a term
 80 | of imprisonment of life in prison.

81 | Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1045 Mental Health
SPONSOR(S): Schwartz
TIED BILLS: None IDEN./SIM. BILLS: SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee		Krol TK	Cunningham 
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1045 makes changes to ch. 916, F.S., Mentally Deficient and Mentally Ill Defendants, and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S. because they have been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities, with a total of 1,098 beds.¹ In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.²

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.³ The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.⁴ DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.⁵ In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.⁶

Competency Evaluation

Currently, courts are required to appoint to more than three experts to provide adult competency evaluations.⁷ Each expert must be a psychiatrist, licensed psychologist, or physician and must, to the extent possible, have completed DCF-approved forensic evaluator training.⁸ DCF is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.⁹ However, current law does not *require* attendance at a DCF approved training or training renewal in order for a person to be appointed as an expert.¹⁰ In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.¹¹ For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.¹²

Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.¹³

Dismissal of Charges following Competency Training

Currently, charges against an adult who has been adjudicated incompetent to proceed due to mental illness may be dismissed after five years of incompetency.¹⁴ This occurs unless the court makes

¹ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

² *Id.*

³ S. 985.19(1), F.S.

⁴ S. 985.19(1)(b), F.S.

⁵ S. 985.19(4), F.S.

⁶ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

⁷ S. 916.115(1), F.S.

⁸ S. 916.115(1)(a), F.S.

⁹ S. 916.115, (1)(b), F.S.

¹⁰ S. 916.115, (1)(a), F.S.

¹¹ S. 985.19(1)(b), F.S.

¹² S. 985.19(1)(d), F.S.

¹³ Rules 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

¹⁴ S. 916.145, F.S.

findings that the person will become competent in the future.¹⁵ Charges are dismissed without prejudice, which allows the state to re-file charges if the person become competent in the future.¹⁶

Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency that puts the client's safety at risk, then treatment may be given for 48 hours. If the person still refuses to give consent, then a court order must be sought for continuation of the treatment. In non-emergency situations, the treatment may not be given (without consent) and a court order must be sought for continued treatment.¹⁷ DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.¹⁸

Effect of Proposed changes

Continuation of Psychotherapeutic Medication

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations¹⁹ and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.²⁰

Competency Hearings

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

Forensic Evaluator Training

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a forensic evaluator registry, and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Beginning July 1, 2013, the training must be completed every five years, and failure to do so will

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 916.107(3), F.S.

¹⁸ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

¹⁹ Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

²⁰ See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006) (Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.

result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.²¹ DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.²²

Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill provides that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.

If the child is determined to be incompetent, the bill requires the evaluator to provide a mental disorder that forms the basis of the incompetency. The bill requires that the basis for the determination of a child's mental condition be specifically stated in the expert's competency evaluation report and must include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition; and
- Address the child's capacity to:
 - Appreciate the charges or allegations against the child.
 - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
 - Understand the adversarial nature of the legal process.
 - Disclose to counsel facts pertinent to the proceedings at issue.
 - Display appropriate courtroom behavior.
 - Testify relevantly.

The bill also requires the evaluator to include in his or her competency evaluation report a "summary of findings" section that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.
Section 2: Amends s. 916.111, F.S., relating to training of mental health experts.
Section 3: Amends s. 916.115, F.S., relating to appointment of experts.
Section 4: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
Section 5: Amends s. 916.145, F.S., relating to dismissal of charges.

²¹ A capital felony must be designated as such by statute. S. 775.081, F.S.

²² DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

- Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
- Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.
- Section 8:** Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445, or \$395 for state or non-profit employees.²³

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

²³ DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)1., F.S.

Lines 275 and 282 incorrectly refer to the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association as the DSM-IV,²⁴ and could be amended to not specifically name the edition.

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Section 916.115(1)(a), F.S., may also need to be amended to remove the language specifying that each expert must, *to the extent possible*, have completed DCF-approved forensic evaluator training.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁴ <http://www.psych.org/MainMenu/Research/DSMIV/FAQs/WhatisthemostrecentversionoftheDSM.aspx>, site last visited January 27, 2012.

1 A bill to be entitled
 2 An act relating to mental health; amending s. 916.107,
 3 F.S.; authorizing, in certain circumstances,
 4 continuation of psychotherapeutic medication for
 5 individuals receiving such medication in a jail before
 6 admission to a psychiatric or forensic facility;
 7 amending s. 916.111, F.S.; requiring forensic
 8 evaluator training for mental health experts appointed
 9 to evaluate defendants for competency to proceed or
 10 for sanity at the time of the commission of the
 11 offense; amending s. 916.115, F.S.; requiring the
 12 Department of Children and Family Services to maintain
 13 and annually provide the courts with a forensic
 14 evaluator registry; amending s. 916.13, F.S.;
 15 providing timeframes for competency hearings to be
 16 held; amending s. 916.145, F.S.; reducing the time for
 17 dismissal of charges for defendants found
 18 nonrestorable from 5 years to 2 years, except in the
 19 case of capital offenses which shall remain at 5
 20 years; amending s. 916.15, F.S.; providing timeframes
 21 for commitment hearings to be held; amending s.
 22 985.19, F.S.; standardizing the protocols, procedures,
 23 and criteria used in reporting expert findings in
 24 determining competency in juvenile cases; revising
 25 requirements related to the forensic evaluator
 26 training program that appointed experts must complete;
 27 requiring experts after a specified date to have
 28 completed such training; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency

57 | situation continues to present a danger to the safety of the
 58 | client or others.

59 | 2. In a situation other than an emergency situation, the
 60 | administrator or designee of the facility shall petition the
 61 | court for an order authorizing necessary and essential treatment
 62 | for the client.

63 | a. If the client has been receiving psychotherapeutic
 64 | medication at the jail at the time of transfer to the forensic
 65 | or civil facility and lacks the capacity to make an informed
 66 | decision regarding mental health treatment at the time of
 67 | admission, the admitting physician may order continued
 68 | administration of the psychotherapeutic medication if, in the
 69 | clinical judgment of the physician, abrupt cessation of the
 70 | psychotherapeutic medication could cause a risk to the health
 71 | and safety of the client during the time a court order to
 72 | medicate is pursued. The jail physician shall provide a current
 73 | psychotherapeutic medication order at the time of transfer to
 74 | the forensic or civil facility.

75 | b. The court order shall allow such treatment for up to a
 76 | period not to exceed 90 days after following the date of the
 77 | entry of the order. Unless the court is notified in writing that
 78 | the client has provided express and informed consent in writing
 79 | or that the client has been discharged by the committing court,
 80 | the administrator or designee shall, before ~~prior to~~ the
 81 | expiration of the initial 90-day order, petition the court for
 82 | an order authorizing the continuation of treatment for another
 83 | 90 days ~~90-day period~~. This procedure shall be repeated until
 84 | the client provides consent or is discharged by the committing

85 court.

86 3. At the hearing on the issue of whether the court should
87 enter an order authorizing treatment for which a client was
88 unable to or refused to give express and informed consent, the
89 court shall determine by clear and convincing evidence that the
90 client has mental illness, retardation, or autism, that the
91 treatment not consented to is essential to the care of the
92 client, and that the treatment not consented to is not
93 experimental and does not present an unreasonable risk of
94 serious, hazardous, or irreversible side effects. In arriving at
95 the substitute judgment decision, the court must consider at
96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
98 b. The probability of adverse side effects;
99 c. The prognosis without treatment; and
100 d. The prognosis with treatment.

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102 The hearing shall be as convenient to the client as may be
103 consistent with orderly procedure and shall be conducted in
104 physical settings not likely to be injurious to the client's
105 condition. The court may appoint a general or special magistrate
106 to preside at the hearing. The client or the client's guardian,
107 and the representative, shall be provided with a copy of the
108 petition and the date, time, and location of the hearing. The
109 client has the right to have an attorney represent him or her at
110 the hearing, and, if the client is indigent, the court shall
111 appoint the office of the public defender to represent the
112 client at the hearing. The client may testify or not, as he or

113 she chooses, and has the right to cross-examine witnesses and
 114 may present his or her own witnesses.

115 Section 2. Section 916.111, Florida Statutes, is amended
 116 to read:

117 916.111 Training of mental health experts.—

118 (1) The evaluation of defendants for competency to proceed
 119 or for sanity at the time of the commission of the offense shall
 120 be conducted in such a way as to ensure uniform application of
 121 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules
 122 of Criminal Procedure.

123 (2) Appointed experts shall have completed forensic
 124 evaluator training as specified in this section.

125 (3) A forensic evaluator training course approved by the
 126 department must be provided at least annually to ensure that
 127 mental health professionals have the opportunity to be placed on
 128 the department's forensic evaluator registry.

129 (a) Beginning July 1, 2013, if an expert chooses to remain
 130 on the registry, he or she must have completed or retaken the
 131 required training course within the previous 5 years. Those who
 132 have not completed the training course must be removed from the
 133 registry and may not conduct evaluations for the courts.

134 (b) A mental health professional who has completed the
 135 training course within the previous 5 years must maintain
 136 documentation of completion of the required training course and
 137 provide current contact information to the department.

138 (4) The department shall develop, and may contract with
 139 accredited institutions:

140 (a)~~(1)~~ To provide:

141 1.~~(a)~~ A plan for training mental health professionals to
 142 perform forensic evaluations and to standardize the criteria and
 143 procedures to be used in these evaluations;

144 2.~~(b)~~ Clinical protocols and procedures based upon the
 145 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 146 Procedure; and

147 3.~~(e)~~ Training for mental health professionals in the
 148 application of these protocols and procedures in performing
 149 forensic evaluations and providing reports to the courts; and

150 (b)~~(2)~~ To compile and maintain the necessary information
 151 for evaluating the success of this program, including the number
 152 of persons trained, the cost of operating the program, and the
 153 effect on the quality of forensic evaluations as measured by
 154 appropriateness of admissions to state forensic facilities and
 155 to community-based care programs.

156 Section 3. Paragraph (b) of subsection (1) of section
 157 916.115, Florida Statutes, is amended to read:

158 916.115 Appointment of experts.—

159 (1) The court shall appoint no more than three experts to
 160 determine the mental condition of a defendant in a criminal
 161 case, including competency to proceed, insanity, involuntary
 162 placement, and treatment. The experts may evaluate the defendant
 163 in jail or in another appropriate local facility or in a
 164 facility of the Department of Corrections.

165 (b) The department shall maintain and annually provide the
 166 courts with a forensic evaluator registry list ~~list~~ of available
 167 mental health professionals who have completed the approved
 168 training as experts.

169 Section 4. Subsection (2) of section 916.13, Florida
 170 Statutes, is amended to read:

171 916.13 Involuntary commitment of defendant adjudicated
 172 incompetent.—

173 (2) A defendant who has been charged with a felony and who
 174 has been adjudicated incompetent to proceed due to mental
 175 illness, and who meets the criteria for involuntary commitment
 176 ~~to the department under the provisions of this chapter,~~ may be
 177 committed to the department, and the department shall retain and
 178 treat the defendant.

179 (a) Within ~~No later than~~ 6 months after the date of
 180 admission and at the end of any period of extended commitment,
 181 or at any time the administrator or designee has ~~shall have~~
 182 determined that the defendant has regained competency to proceed
 183 or no longer meets the criteria for continued commitment, the
 184 administrator or designee shall file a report with the court
 185 pursuant to the applicable Florida Rules of Criminal Procedure.

186 (b) A competency hearing must be held within 30 days after
 187 a court receives notification that the defendant is competent to
 188 proceed or no longer meets the criteria for continued
 189 commitment.

190 Section 5. Section 916.145, Florida Statutes, is amended
 191 to read:

192 916.145 Dismissal of charges.—The charges against any
 193 defendant adjudicated incompetent to proceed due to the
 194 defendant's mental illness shall be dismissed without prejudice
 195 to the state if the defendant remains incompetent to proceed 2 ~~5~~
 196 years after such determination or 5 years after such

197 | determination if the charge is a capital offense, unless the
 198 | court in its order specifies its reasons for believing that the
 199 | defendant will become competent to proceed within the
 200 | foreseeable future and specifies the time within which the
 201 | defendant is expected to become competent to proceed. The
 202 | charges against the defendant shall be ~~are~~ dismissed without
 203 | prejudice to the state to refile the charges if ~~should~~ the
 204 | defendant is ~~be~~ declared competent to proceed in the future.

205 | Section 6. Subsection (5) is added to section 916.15,
 206 | Florida Statutes, to read:

207 | 916.15 Involuntary commitment of defendant adjudicated not
 208 | guilty by reason of insanity.—

209 | (5) The commitment hearing must be held within 30 days
 210 | after the court receives notification that the defendant no
 211 | longer meets the criteria for continued commitment.

212 | Section 7. Subsection (1) of section 985.19, Florida
 213 | Statutes, is amended, subsection (7) is renumbered as subsection
 214 | (8), and a new subsection (7) is added to that section, to read:

215 | 985.19 Incompetency in juvenile delinquency cases.—

216 | (1) If, at any time prior to or during a delinquency case,
 217 | the court has reason to believe that the child named in the
 218 | petition may be incompetent to proceed with the hearing, the
 219 | court on its own motion may, or on the motion of the child's
 220 | attorney or state attorney must, stay all proceedings and order
 221 | an evaluation of the child's mental condition.

222 | (a) Any motion questioning the child's competency to
 223 | proceed must be served upon the child's attorney, the state
 224 | attorney, the attorneys representing the Department of Juvenile

225 Justice, and the attorneys representing the Department of
 226 Children and Family Services. Thereafter, any motion, notice of
 227 hearing, order, or other legal pleading relating to the child's
 228 competency to proceed with the hearing must be served upon the
 229 child's attorney, the state attorney, the attorneys representing
 230 the Department of Juvenile Justice, and the attorneys
 231 representing the Department of Children and Family Services.

232 (b) All determinations of competency must ~~shall~~ be made at
 233 a hearing, with findings of fact based on an evaluation of the
 234 child's mental condition made by at least ~~not less than~~ two ~~but~~
 235 not ~~nor~~ more than three experts appointed by the court. ~~The~~
 236 ~~basis for the determination of incompetency must be specifically~~
 237 ~~stated in the evaluation. In addition, a recommendation as to~~
 238 ~~whether residential or nonresidential treatment or training is~~
 239 ~~required must be included in the evaluation.~~ Experts appointed
 240 by the court to determine the mental condition of a child shall
 241 be allowed reasonable fees for services rendered. State
 242 employees may be paid expenses pursuant to s. 112.061. The fees
 243 shall be taxed as costs in the case.

244 (c) A child is competent to proceed if the child has
 245 sufficient present ability to consult with counsel with a
 246 reasonable degree of rational understanding and the child has a
 247 rational and factual understanding of the present proceedings.

248 (d) The basis for the determination of a child's mental
 249 condition must be specifically stated in the expert's competency
 250 evaluation report and must include written findings that:

- 251 1. Identify the specific matters referred for evaluation.
- 252 2. Identify the sources of information used by the expert.

253 3. Describe the procedures, techniques, and diagnostic
 254 tests used in the examination to determine the basis of the
 255 child's mental condition.

256 4. Address the child's capacity to:

257 a. Appreciate the charges or allegations against the
 258 child.

259 b. Appreciate the range and nature of possible penalties
 260 that may be imposed in the proceedings against the child, if
 261 applicable.

262 c. Understand the adversarial nature of the legal process.

263 d. Disclose to counsel facts pertinent to the proceedings
 264 at issue.

265 e. Display appropriate courtroom behavior.

266 f. Testify relevantly.

267 5. Present the factual basis for the expert's clinical
 268 findings and opinions of the child's mental condition.

269 (e) If the evaluator determines the child to be
 270 incompetent to proceed to trial, the evaluator must report on
 271 the mental disorder that forms the basis of the incompetency.

272 (f) The expert's factual basis of his or her clinical
 273 findings and opinions must be supported by the diagnostic
 274 criteria found in the most recent edition of the Diagnostic and
 275 Statistical Manual of the American Psychiatric Association (DSM-
 276 IV) and must be presented in a section of his or her competency
 277 evaluation report that shall be identified as a summary of
 278 findings. This section must include:

279 1. The day, month, year, and length of time of the face-
 280 to-face diagnostic clinical interview to determine the child's

281 mental condition.

282 2. A statement that identifies the DSM-IV clinical name
 283 and associated diagnostic code for the specific mental disorder
 284 that forms the basis of the child's incompetency.

285 3. A statement of how the child would benefit from
 286 competency restoration services in the community or in a secure
 287 residential treatment facility.

288 4. An assessment of the probable duration of the treatment
 289 to restore competence, and the probability that the child will
 290 attain competence to proceed in the foreseeable future.

291 5. A description of recommended treatment or education
 292 appropriate for the mental disorder.

293 (g)(e) All court orders determining incompetency must
 294 include specific written findings by the court as to the nature
 295 of the incompetency and whether the child requires a secure or
 296 nonsecure treatment or training environment environments.

297 (h)(d) For competency incompetency evaluations related to
 298 mental illness, the Department of Children and Family Services
 299 shall maintain and annually provide the courts with a forensic
 300 evaluator registry list of available mental health professionals
 301 who have completed the approved a training as experts pursuant
 302 to this section program approved by the Department of Children
 303 and Family Services to perform the evaluations.

304 (i)(e) For competency incompetency evaluations related to
 305 mental retardation or autism, the court shall order the Agency
 306 for Persons with Disabilities to examine the child to determine
 307 if the child meets the definition of "retardation" or "autism"
 308 in s. 393.063 and provide a clinical opinion as to, if so,

309 whether the child is competent to proceed with delinquency
 310 proceedings.

311 ~~(f) A child is competent to proceed if the child has~~
 312 ~~sufficient present ability to consult with counsel with a~~
 313 ~~reasonable degree of rational understanding and the child has a~~
 314 ~~rational and factual understanding of the present proceedings.~~
 315 ~~The report must address the child's capacity to:~~

- 316 ~~1. Appreciate the charges or allegations against the~~
- 317 ~~child.~~
- 318 ~~2. Appreciate the range and nature of possible penalties~~
- 319 ~~that may be imposed in the proceedings against the child, if~~
- 320 ~~applicable.~~
- 321 ~~3. Understand the adversarial nature of the legal process.~~
- 322 ~~4. Disclose to counsel facts pertinent to the proceedings~~
- 323 ~~at issue.~~
- 324 ~~5. Display appropriate courtroom behavior.~~
- 325 ~~6. Testify relevantly.~~

326 (j)~~(g)~~ Immediately upon the filing of the court order
 327 finding a child incompetent to proceed, the clerk of the court
 328 shall notify the Department of Children and Family Services and
 329 the Agency for Persons with Disabilities and fax or hand deliver
 330 to the department and to the agency a referral packet that
 331 includes, at a minimum, the court order, the charging documents,
 332 the petition, and the court-appointed evaluator's reports.

333 (k)~~(h)~~ After placement of the child in the appropriate
 334 setting, the Department of Children and Family Services in
 335 consultation with the Agency for Persons with Disabilities, as
 336 appropriate, must, within 30 days after placement of the child,

337 | prepare and submit to the court a treatment or training plan for
 338 | the child's restoration of competency. A copy of the plan must
 339 | be served upon the child's attorney, the state attorney, and the
 340 | attorneys representing the Department of Juvenile Justice.

341 | (7) Effective July 1, 2013, court-appointed experts must
 342 | have completed forensic evaluator training approved by the
 343 | Department of Children and Family Services and comply with these
 344 | additional requirements:

345 | (a) If an expert chooses to remain on the registry, the
 346 | expert must have completed or retaken the required training
 347 | course within the previous 5 years. An expert who has not
 348 | completed the required training within the previous 5 years must
 349 | be removed from the registry and may not conduct competency
 350 | evaluations for the courts.

351 | (b) A mental health professional who has completed the
 352 | training course within the previous 5 years must maintain
 353 | documentation of having completed the required training and
 354 | provide current contact information to the Department of
 355 | Children and Family Services.

356 | Section 8. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1097 Sexually Violent Predators
SPONSOR(S): Kreegel
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2052; SB 7162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Sexually violent predators are persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment. To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act (Act), which creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).

The bill amends the Involuntary Civil Commitment of Sexually Violent Predators Act. Specifically, the bill:

- Amends the definition of "sexually violent offense" to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated. The term will no longer include sexually-motivated criminal acts that are misdemeanors.
- Requires the Department of Children and Families (DCF) to prioritize the assessments of persons convicted of a sexually violent offense who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person's release date.
- Clarifies the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney.
- Amends s. 394.917, F.S., to allow sexually violent predators with deportation detainers who are released from confinement to be taken into custody by the federal government rather than be immediately committed to the custody of DCF.
- Makes it a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take specified items into any facility providing confinement and treatment under the Act.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill creates a new third degree felony relating to contraband in civil commitment facilities, it may have a negative prison bed impact on the Department of Corrections. The bill does not appear to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Jimmy Ryce Act - Background

Sexually violent predators are persons who have been convicted of a sexually violent offense¹ and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁵ Under the Ryce Act, offenders with specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether they meet the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of the recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the person is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center, the case proceeds through the commitment process, and in many instances a civil trial is held.⁷

Those civilly committed as a sexually violent predator pursuant to the Ryce Act are housed for treatment at the Florida Civil Commitment Center.⁸ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.⁹ Section 394.918, F.S., provides that persons committed to the state under the Ryce Act be confined until the court determines that they are no longer a threat to public safety.

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or her to be released. If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹⁰

Since the program's inception, over 42,777 offenders have been referred to DCF for screening and assessment.¹¹ As of September 2011, there were 677 detained and committed individuals at the Florida Civil Commitment Center.¹²

¹ The term "sexually violent offense" is defined in s. 394.912, F.S.

² Section 394.912, F.S.

³ Sections 934.910-932, F.S.

⁴ *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011. On file with Criminal Justice Subcommittee staff.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The Florida Civil Commitment Center is a 720-bed, physically secure facility located in Arcadia, FL, and operated by The GEO Group. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, Sexually Violent Predator Program Reports. <http://edr.state.fl.us/Content/resource-demand/criminal-justice/reports/sexually-violent-predators/index.cfm> (last visited January 26, 2012).

¹² *Supra*, note 4.

Sexually Violent Predator - Definition

As noted above, sexually violent predators are defined as persons who have been convicted of a sexually violent offense and suffer from a mental abnormality or personality disorder that makes them likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. Section 934.912(9), F.S., defines a "sexually violent offense" to include offenses such as murder while engaged in sexual battery; sexual battery; and lewd, lascivious, or indecent assault or act upon or in the presence of a child. The definition also includes:

- (h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings, has been determined beyond a reasonable doubt to have been sexually motivated.

Effect of the Bill

The bill amends paragraph (9)(h) of the definition of "sexually violent offense" to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated. The term will no longer include misdemeanor sexually motivated criminal acts.

Notice of Release

Section 394.913, F.S., requires agencies with jurisdiction over a person who has been convicted of a sexually violent offense to give written notice to the multidisciplinary team and to the state attorney of the person's upcoming release from confinement. The statute requires this notice to be given within a certain time period prior to the person's release. For example, written notice must be given:

- At least 545 days prior to the anticipated release of a person serving a sentence in the custody of the Department of Corrections.
- At least 180 days prior to the anticipated release from residential commitment of a person committed to the custody of the Department of Juvenile Justice.
- At least 180 days prior to the anticipated hearing regarding possible release of a person committed to the custody of DCF who has been found not guilty by reason of insanity or mental incapacity.¹³

After receiving notification, the multidisciplinary team assesses the offender to determine whether he or she meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.

Effect of the Bill

The bill amends s. 394.913(1), F.S., to require DCF to prioritize the assessments of persons who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person's release date.

Immediate Release – Assessment and Petition Timeframes

On occasion, a person convicted of a sexually violent offense may unexpectedly be ordered to be released from confinement. In such instances, the agency with jurisdiction over the person must immediately transfer such person to the custody of DCF upon release. Within 72 hours of this transfer, the multidisciplinary team must assess the person to determine whether he or she meets the definition of a sexually violent predator and if so, make a recommendation to the state attorney. However, if the 72-hour period ends on a weekend or holiday, the assessment and recommendation must be provided within the next working day thereafter.

Within 48 hours after receiving the assessment and recommendation, the state attorney may petition the court alleging that the person is a sexually violent predator. If the petition is not filed within 48 hours, the person must be released.

¹³ Section 394.913(1), F.S.

Currently, the law does not address what happens if the statutory timeframes described above end after 5 PM. This could be problematic, because failure to abide by the statutory timeframes could result in an unintended release of a person under consideration for civil commitment.

Effect of the Bill

The bill amends s. 394.9135, F.S., to clarify the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney. The bill specifies that if the timeframes for completing assessments, recommendations or petitions falls after 5 PM on a work day, then the document may be filed on the next working day.

Commitment

Section 394.917, F.S., provides that if a court or jury determines that a person is a sexually violent predator, the person must be committed to DCF's custody. This occurs upon the expiration of the incarcerative portion of the person's criminal sentence and disposition of any detainers, *other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services*. This exception for deportation detainers requires that a person be committed to DCF's custody, even where a person has a deportation detainer.

Effect of the Bill

The bill amends s. 394.917, F.S., to remove the deportation detainer exception. As a result, sexually violent predators with deportation detainers will not be required to be committed to the custody of DCF upon release from confinement but could instead be taken into custody by the federal government.

Contraband

The bill creates s. 394.9265, F.S., which makes it a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take the following into any facility providing confinement and treatment under the Ryce Act:

- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- Any controlled substance defined in chapter 893, F.S.,¹⁴ or
- Any firearm or weapon.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.912, F.S., relating to definitions.

Section 2. Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.

Section 3. Amends s. 394.9135, F.S., relating to immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold custody; filing petition after release.

Section 4. Amends s. 394.917, F.S., relating to determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellant cases.

Section 5. Creates s. 394.9265, F.S., relating to introduction or removal of certain articles unlawful; penalty.

Section 6: Provides an effective date of July 1, 2012.

¹⁴Chapter 893, F.S., is the Drug Abuse and Control Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill creates a new third degree felony relating to contraband in civil commitment facilities, it may have a negative prison bed impact on the Department of Corrections. DCF reports that this bill will not have a fiscal impact on the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 84 would be more clear if "pursuant to 394.9135(2)" was inserted after the word recommendation.

The bill makes it a third degree felony for a person to knowingly and intentionally bring, send, etc., certain items into any facility providing confinement and treatment under the Ryce Act. As drafted, no exception is provided for persons who introduce such items into a facility with legitimate reasons for doing so (e.g., those delivering medications to the facility for use by physicians, etc.).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexually violent predators;
 3 amending s. 394.912, F.S.; limiting the definition of
 4 the term "sexually violent offense," for purposes of
 5 sexually violent predator provisions, to felony
 6 offenses; amending s. 394.913, F.S.; providing for
 7 prioritization of written assessment and
 8 recommendation for a person scheduled or up for review
 9 for release when the assessment and recommendation
 10 have not been completed within a specified period;
 11 amending s. 394.9135, F.S.; revising provisions
 12 relating to petitions to hold a person in custody
 13 following release and transfer to the Department of
 14 Children and Family Services to provide for extension
 15 of certain time periods that expire after normal
 16 business hours; amending s. 394.917, F.S.; deleting an
 17 exception for detainers for deportation by the United
 18 States Bureau of Citizenship and Immigration Services
 19 to provisions requiring sexually violent predators to
 20 be committed to the custody of the Department of
 21 Children and Family Services upon the expiration of
 22 the incarcerative portion of all criminal sentences
 23 and disposition of any detainers; creating s.
 24 394.9265, F.S.; prohibiting the knowing and
 25 intentional bringing of contraband into or its removal
 26 from the grounds of any facility for commitment or
 27 detention of sexually violent predators; specifying

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28 items that constitute contraband; providing criminal
 29 penalties for violations; providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. Paragraph (h) of subsection (9) of section
 34 394.912, Florida Statutes, is amended to read:

35 394.912 Definitions.—As used in this part, the term:

36 (9) "Sexually violent offense" means:

37 (h) Any felony criminal act that, either at the time of
 38 sentencing for the offense or subsequently during civil
 39 commitment proceedings under this part, has been determined
 40 beyond a reasonable doubt to have been sexually motivated.

41 Section 2. Subsection (1) of section 394.913, Florida
 42 Statutes, is amended to read:

43 394.913 Notice to state attorney and multidisciplinary
 44 team of release of sexually violent predator; establishing
 45 multidisciplinary teams; information to be provided to
 46 multidisciplinary teams.—

47 (1) The agency with jurisdiction over a person who has
 48 been convicted of a sexually violent offense shall give written
 49 notice to the multidisciplinary team, and a copy to the state
 50 attorney of the circuit where that person was last convicted of
 51 a sexually violent offense. If the person has never been
 52 convicted of a sexually violent offense in this state but has
 53 been convicted of a sexually violent offense in another state or
 54 in federal court, the agency with jurisdiction shall give
 55 written notice to the multidisciplinary team and a copy to the

56 state attorney of the circuit where the person was last
 57 convicted of any offense in this state. If the person is being
 58 confined in this state pursuant to interstate compact and has a
 59 prior or current conviction for a sexually violent offense, the
 60 agency with jurisdiction shall give written notice to the
 61 multidisciplinary team and a copy to the state attorney of the
 62 circuit where the person plans to reside upon release or, if no
 63 residence in this state is planned, the state attorney in the
 64 circuit where the facility from which the person to be released
 65 is located.

66 (a) Except as provided in s. 394.9135, the written notice
 67 must be given:

68 1.~~(a)~~ At least 545 days prior to the anticipated release
 69 from total confinement of a person serving a sentence in the
 70 custody of the Department of Corrections, except that in the
 71 case of persons who are totally confined for a period of less
 72 than 545 days, written notice must be given as soon as
 73 practicable;

74 2.~~(b)~~ At least 180 days prior to the anticipated release
 75 from residential commitment of a person committed to the custody
 76 of the Department of Juvenile Justice, except that in the case
 77 of persons who are committed to low or moderate risk, written
 78 notice must be given as soon as practicable; or

79 3.~~(c)~~ At least 180 days prior to the anticipated hearing
 80 regarding possible release of a person committed to the custody
 81 of the department who has been found not guilty by reason of
 82 insanity or mental incapacity of a sexually violent offense.

83 (b) Notwithstanding paragraph (a), in the case of a person
 84 for whom the written assessment and recommendation has not been
 85 completed at least 365 days prior to his or her release from
 86 total confinement, the department shall prioritize the
 87 assessment of that person based upon the person's release date.

88 Section 3. Subsections (2) and (3) of section 394.9135,
 89 Florida Statutes, are amended to read:

90 394.9135 Immediate releases from total confinement;
 91 transfer of person to department; time limitations on
 92 assessment, notification, and filing petition to hold in
 93 custody; filing petition after release.-

94 (2) Within 72 hours after transfer, the multidisciplinary
 95 team shall assess whether the person meets the definition of a
 96 sexually violent predator. If the multidisciplinary team
 97 determines that the person does not meet the definition of a
 98 sexually violent predator, that person shall be immediately
 99 released. If the multidisciplinary team determines that the
 100 person meets the definition of a sexually violent predator, the
 101 team shall provide the state attorney, as designated by s.
 102 394.913, with its written assessment and recommendation within
 103 the 72-hour period or, if the 72-hour period ends after 5 p.m.
 104 on a working day or on a weekend or holiday, within the next
 105 working day thereafter.

106 (3) Within 48 hours after receipt of the written
 107 assessment and recommendation from the multidisciplinary team,
 108 the state attorney, as designated in s. 394.913, may file a
 109 petition with the circuit court alleging that the person is a
 110 sexually violent predator and stating facts sufficient to

111 support such allegation. If a petition is not filed within 48
 112 hours after receipt of the written assessment and recommendation
 113 by the state attorney, the person shall be immediately released,
 114 except that, if the 48-hour period ends after 5 p.m. on a
 115 working day or on a weekend or holiday, the petition may be
 116 filed on the next working day without resulting in the person's
 117 release. If a petition is filed pursuant to this section and the
 118 judge determines that there is probable cause to believe that
 119 the person is a sexually violent predator, the judge shall order
 120 the person be maintained in custody and held in an appropriate
 121 secure facility for further proceedings in accordance with this
 122 part.

123 Section 4. Subsection (2) of section 394.917, Florida
 124 Statutes, is amended to read:

125 394.917 Determination; commitment procedure; mistrials;
 126 housing; counsel and costs in indigent appellate cases.—

127 (2) If the court or jury determines that the person is a
 128 sexually violent predator, upon the expiration of the
 129 incarcerative portion of all criminal sentences and disposition
 130 of any detainers ~~other than detainers for deportation by the~~
 131 ~~United States Bureau of Citizenship and Immigration Services,~~
 132 the person shall be committed to the custody of the Department
 133 of Children and Family Services for control, care, and treatment
 134 until such time as the person's mental abnormality or
 135 personality disorder has so changed that it is safe for the
 136 person to be at large. At all times, persons who are detained or
 137 committed under this part shall be kept in a secure facility
 138 segregated from patients of the department who are not detained

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139 or committed under this part.

140 Section 5. Section 394.9265, Florida Statutes, is created
 141 to read:

142 394.9265 Introduction or removal of certain articles
 143 unlawful; penalty.-

144 (1) Except as authorized by law, it is unlawful to
 145 knowingly and intentionally bring into any facility providing
 146 secure confinement and treatment under this part, or to take or
 147 attempt to take or send therefrom, any of the following
 148 articles:

149 (a) Any intoxicating beverage or beverage that causes or
 150 may cause an intoxicating effect;

151 (b) Any controlled substance as defined in chapter 893; or

152 (c) Any firearm or weapon.

153 (2) A person who violates this section commits a felony of
 154 the third degree, punishable as provided in s. 775.082, s.
 155 775.083, or s. 775.084.


156 Section 6. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1099 Stalking and Aggravated Stalking

SPONSOR(S): Plakon and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill makes a variety of changes to s. 784.048, F.S., the stalking statute. Specifically, the bill:

- Revises stalking-related definitions, primarily the definition of "credible threat."
- Increases the penalties for three of the four aggravated stalking offenses from third degree felonies to either second or first degree felonies.
- Requires the court to order a defendant found guilty of stalking or aggravated stalking to attend a batterers' intervention program pursuant to s. 741.281, F.S.
- Requires the court, for any sentence, to consider issuing an injunction restraining a defendant from victim contact for up to ten years.
- Establishes a cause of action for an injunction for protection against stalking and aggravated stalking, similar to injunctions for protection against domestic violence.

The bill amends the offense severity ranking chart of the Criminal Punishment Code to conform to the penalty revisions made by the bill.

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections. See fiscal section.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Stalking

Section 784.048, F.S., criminalizes the offenses of stalking and aggravated stalking. Stalking is a first degree misdemeanor¹ and is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.²

Section 784.048, F.S., establishes four aggravated stalking offenses, each of which is a third degree felony:³

- Subsection (3) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person while making a credible threat with the intent to place that person in reasonable fear of death or bodily injury for himself, his child, sibling, spouse, parent, or dependent. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (4) provides that aggravated stalking occurs when a person, after an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that person. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).
- Subsection (5) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (7) provides that aggravated stalking occurs when a person, after being sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and after having been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).

Section 748.048, F.S., provides the following definitions:

- "Harass" means "engaging in a course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose."⁴
- "Course of conduct" means "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose."⁵
- "Credible threat" means "a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person."⁶
- "Cyberstalk" means "engaging in a course of conduct to communicate through words or images by electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose."⁷

In 1995, the constitutionality of Florida's stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.⁸

¹ Punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

² Section 784.048(2), F.S.

³ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁴ Section 784.048(1), F.S.

⁵ Section 784.048(1)(b), F.S.

⁶ Section 784.048(1)(c), F.S.

⁷ Section 784.048(1)(d), F.S.

⁸ *Bouters v. State*, 659 So.2d 235 (1995), *cert.denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.⁹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.¹⁰ As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹¹

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors.¹² The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.¹³

Effect of the Bill

The bill substantively changes the definition of the term "credible threat" to "a verbal or nonverbal threat, including a threat delivered by electronic communication, a threat implied by a pattern of conduct, or a combination of the two, made with the intent to place the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her immediate family, and made with the apparent ability to carry out the threat to cause such harm." The bill provides that it is not necessary to prove that the person making the threat had the intent to actually carry out the threat and that the present incarceration of the person making the threat is not a bar to prosecution.

The bill also deletes the current language requiring that the threat be against the life of, or a threat to cause bodily injury to, a person.

The bill modifies the definition of "course of conduct" to specify that "a pattern of conduct" *includes two or more* acts over a period of time which indicate a continuity of purpose.

The bill adds the definition of "immediate family" as "a person's spouse, parent, child, grandparent, or sibling."

The bill removes "intent to cause the person who is the target of the threat to reasonably fear for his or her safety" as an element of aggravated stalking as defined in s. 784.048(3), F.S. Consequently, under subsection (3), aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to that person.

The bill increases the criminal penalties for three of the four aggravated stalking offenses.

- The penalty for violating of s. 784.048(4), F.S. (knowingly, willfully, maliciously, and repeatedly following, harassing, or cyberstalking a person, after an injunction for protection against repeat violence, sexual violence, etc.), is increased from a third degree felony to a second degree felony.¹⁴ This offense remains ranked in Level 7 of the offense severity ranking chart.
- The penalty for violating s. 784.048(5), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a minor under 16 years of age), is increased from third degree

⁹ Section 921.002, F.S.

¹⁰ Section 921.0022, F.S.

¹¹ Section 921.0023, F.S.

¹² Section 921.0024, F.S.

¹³ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. Section 775.082, F.S.

¹⁴ Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.

felony to a first degree felony.¹⁵ This offense remains ranked in Level 6 of the offense severity ranking chart.

- The penalty for violating s. 784.048(7), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a victim where the offender has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and has been issued a no contact order), is increased from a third degree felony to a first degree felony. This offense remains ranked in Level 7 of the offense severity ranking chart.

The bill amends s. 921.0022, F.S., to correctly reflect the three penalty increases in the offense severity ranking chart.

Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence

A victim of domestic violence¹⁶ or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence¹⁷ may seek protective injunctive relief.¹⁷ In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.¹⁸ The court must set a hearing at the earliest possible time after a petition is filed.¹⁹ The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit (if any), notice of hearing, and any temporary injunction that has been issued.²⁰

The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor²¹ under s. 741.31, F.S.²² Either party may move the court to modify or dissolve an injunction at any time.²³

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,²⁴ dating violence,²⁵ and sexual violence.²⁶ This statute basically parallels the provisions discussed above in the domestic violence law.

¹⁵ Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.

¹⁶ Section 741.28(2), F.S., defines "domestic violence" as "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."

¹⁷ Section 741.30(1), F.S.

¹⁸ Section 741.30(3), F.S.

¹⁹ Section 741.30(4), F.S.

²⁰ *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

²¹ Punishable by up to 1 year imprisonment or a fine of up to \$1,000.

²² Section 741.30(9), F.S.

²³ Section 741.30(10), F.S.

²⁴ Section 784.046(1)(b), F.S., defines "repeat violence" as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member." Section 784.046(1)(a), F.S., defines "violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person."

²⁵ Section 784.046(1)(d), F.S., defines "dating violence" as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.

²⁶ Section 784.046(1)(c), F.S., defines "sexual violence" as "any one incident of: 1. Sexual battery, as defined in ch. 794, F.S.; 2. A lewd or lascivious act, as defined in ch. 800, F.S., committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in ch. 787, F.S.; 4. Sexual performance by a child, as described in ch. 827, F.S.; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Currently, a statutory cause of action does not exist *specifically* for an injunction for protection against stalking or aggravated stalking. As such, persons desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence or the repeat violence injunction statutes outlined above, which each include stalking and/or aggravated stalking as a basis for petitioning for an injunction.

- Domestic violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death of one family or household member by another member."²⁷
- Dating violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."²⁸
- Repeat violence injunctions require "...two incidents of stalking or aggravated stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member."²⁹

As such, a person desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence injunction statute or the repeat violence injunction statute outlined above.

Effect of the Bill

The bill amends s. 784.048, F.S., to require the sentencing court, as part of any sentence, to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The bill expresses legislative intent that the length of the restraining order be based upon the seriousness of the case facts, the probability of future violations, and the victim's safety. The court may issue the injunction regardless of whether the defendant is in prison, county jail, or has his or her sentence suspended and is placed on probation.

The bill also creates a statutory cause of action for an injunction for protection against stalking and aggravated stalking, similar to the current causes of action for injunctions against domestic violence, repeat violence, sexual violence, and dating violence. The bill allows a stalking victim or the parent of a child under 16 on behalf of the child to file a sworn petition for an injunction for protection against stalking or aggravated stalking in circuit court.

The bill requires the petition for protection to allege the incidents of stalking or aggravated stalking and include specific facts and circumstances that form the basis upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction. The bill requires the clerk of the court to provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

Batterer's Intervention Program

Section 741.32, F.S., establishes a batterer's intervention program to protect the victims of domestic violence and their children and to hold the perpetrators of domestic violence responsible for their acts. The Department of Children and Family Services is responsible for certifying and monitoring the batterer's intervention programs in Florida.³⁰ The goals of the programs are to increase victim safety, eliminate violence in intimate relationships, and stop other forms of abusive behavior. A judge can order a person to attend the batterers' intervention program if:

- A person is found guilty of an act of, has had adjudication withheld on, or has plead nolo contendere to domestic violence;³¹
- An injunction for protection against domestic violence has been entered against him or her;³²
- A person has willfully violated an injunction for protection against domestic violence;³³

²⁷ *Supra* note 14.

²⁸ Section 784.046(1)(d), F.S.

²⁹ *Id.*

³⁰ Section 741.32, F.S.

³¹ Section 741.281, F.S.

³² Section 741.30(6)(e), F.S.

³³ *Id.*

- A person, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence and an injunction for protection against domestic violence has been entered against him or her,³⁴ or
- A person, in this state or any other state, has had at any time a prior injunction for protection entered against him or her after a hearing with notice and an injunction for protection against domestic violence has been entered against him or her.³⁵

Effect of the Bill

The bill requires the court to order a defendant found guilty of stalking or aggravated stalking to attend a batterers' intervention program pursuant to s. 741.281, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 784.048, F.S., stalking; definitions; penalties.

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

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in a slightly positive fiscal impact on the Department of Children and Family Services through the collection of fees by persons court-ordered to attend batterer's intervention programs.³⁶

2. Expenditures:

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections.

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2012-2013	3	3	\$30,387	\$580,920	\$611,307	\$611,307
2013-2014	10	7	\$134,180	\$180,201	\$314,381	\$925,688
2014-2015	13	3	\$242,627	\$250,120	\$492,747	\$1,418,435
2015-2016	17	4	\$322,800	\$456,533	\$779,333	\$2,197,768
2016-2017	24	7	\$449,524	\$405,006	\$854,530	\$3,052,298
Total	24	24	\$1,179,518	\$1,872,780	\$3,052,298	\$3,052,298

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 13, 2012

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 731.327, F.S.

FY 2010-11 operating costs per inmate were obtained from DOC. The \$53.35 per diem is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.40 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insights, Inc.

Note: This impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a stand-alone estimate of the prison bed need of this bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons convicted of aggravated stalking will potentially be subject to increased fines not exceeding \$10,000, and those convicted of stalking or aggravated stalking will be subject to paying the \$30 fee for each 29-week batterers' intervention program he or she is ordered to attend under the bill.³⁷

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁷ Section 741.327(2), F.S.

1 A bill to be entitled
 2 An act relating to stalking and aggravated stalking;
 3 amending s. 784.048, F.S.; redefining the terms
 4 "course of conduct" and "credible threat" and defining
 5 the term "immediate family"; providing that a person
 6 who makes a threat with the intent to place another
 7 person in reasonable fear for his or her safety or the
 8 safety of his or her immediate family commits the
 9 offense of aggravated stalking under certain
 10 circumstances; increasing the criminal penalties for
 11 certain offenses of aggravated stalking; requiring
 12 that the sentencing court consider issuing an
 13 injunction that restrains a defendant from any contact
 14 with the victim for up to 10 years; providing
 15 legislative intent regarding the length of any such
 16 restraining order; requiring that the court order the
 17 defendant to attend a batterers' intervention program
 18 if the court finds the defendant guilty of stalking or
 19 aggravated stalking; creating a cause of action for an
 20 injunction for protection from stalking and aggravated
 21 stalking; providing that a person who is the victim of
 22 stalking or aggravated stalking, or who is the parent
 23 or legal guardian of a child younger than 16 years of
 24 age and who seeks an injunction for protection, has
 25 standing to file a petition for an injunction for
 26 protection from stalking or aggravated stalking;
 27 providing that an injunction for protection from
 28 stalking or aggravated stalking may be sought

29 | regardless of whether another cause of action is
 30 | available or pending between the parties; requiring
 31 | that the petition for an injunction for protection
 32 | allege the incidents of stalking or aggravated
 33 | stalking and include the specific facts and
 34 | circumstances that form the basis upon which relief is
 35 | sought; prohibiting the court from requiring the
 36 | petitioner to file a bond upon the issuance of an
 37 | injunction for protection from stalking or aggravated
 38 | stalking; requiring that the clerk of the court
 39 | provide the petitioner with a certified copy of any
 40 | injunction for protection from stalking or aggravated
 41 | stalking which is entered by the court; amending s.
 42 | 921.0022, F.S., relating to the offense severity
 43 | ranking chart of the Criminal Punishment Code;
 44 | revising provisions to conform to changes made by the
 45 | act; providing an effective date.

46 |
 47 | Be It Enacted by the Legislature of the State of Florida:

48 |
 49 | Section 1. Section 784.048, Florida Statutes, is amended
 50 | to read:

51 | 784.048 Stalking; definitions; penalties.—

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

53 | (a) "Harass" means to engage in a course of conduct
 54 | directed at a specific person which ~~that~~ causes substantial
 55 | emotional distress to that ~~in such~~ person and serves no
 56 | legitimate purpose.

57 (b) "Course of conduct" means a pattern of conduct,
 58 including two or more ~~composed of a series of~~ acts over a period
 59 of time, however short, which indicate evidencing a continuity
 60 of purpose. The term does not include constitutionally protected
 61 activity such as is not included within the meaning of "course
 62 of conduct." ~~Such constitutionally protected activity includes~~
 63 picketing or other organized protests.

64 (c) "Credible threat" means a verbal or nonverbal threat,
 65 including a threat delivered by electronic communication, a
 66 threat implied by a pattern of conduct, or a combination of the
 67 two, made with the intent to place the person who is the target
 68 of the threat in reasonable fear for his or her safety or the
 69 safety of his or her immediate family, and made with the
 70 apparent ability to carry out the threat to cause such harm. It
 71 is not necessary to prove that the person making the threat had
 72 the intent to actually carry out the threat. The present
 73 incarceration of the person making the threat is not a bar to
 74 prosecution under this section ~~made with the intent to cause the~~
 75 ~~person who is the target of the threat to reasonably fear for~~
 76 ~~his or her safety. The threat must be against the life of, or a~~
 77 ~~threat to cause bodily injury to, a person.~~

78 (d) "Cyberstalk" means to engage in a course of conduct to
 79 communicate, or to cause to be communicated, words, images, or
 80 language by or through the use of electronic mail or electronic
 81 communication, directed at a specific person, causing
 82 substantial emotional distress to that person and serving no
 83 legitimate purpose.

84 (e) "Immediate family" means a person's spouse, parent,

85 child, grandparent, or sibling.

86 (2) A ~~Any~~ person who willfully, maliciously, and
 87 repeatedly follows, harasses, or cyberstalks another person
 88 commits the offense of stalking, a misdemeanor of the first
 89 degree, punishable as provided in s. 775.082 or s. 775.083.

90 (3) A ~~Any~~ person who willfully, maliciously, and
 91 repeatedly follows, harasses, or cyberstalks another person, and
 92 makes a credible threat to that person ~~with the intent to place~~
 93 ~~that person in reasonable fear of death or bodily injury of the~~
 94 ~~person, or the person's child, sibling, spouse, parent, or~~
 95 ~~dependent,~~ commits the offense of aggravated stalking, a felony
 96 of the third degree, punishable as provided in s. 775.082, s.
 97 775.083, or s. 775.084.

98 (4) A ~~Any~~ person who, after an injunction for protection
 99 against repeat violence, sexual violence, or dating violence
 100 pursuant to s. 784.046, or an injunction for protection against
 101 domestic violence pursuant to s. 741.30, or after any other
 102 court-imposed prohibition of conduct toward the subject person
 103 or that person's property, knowingly, willfully, maliciously,
 104 and repeatedly follows, harasses, or cyberstalks another person
 105 commits the offense of aggravated stalking, a felony of the
 106 second ~~third~~ degree, punishable as provided in s. 775.082, s.
 107 775.083, or s. 775.084.

108 (5) A ~~Any~~ person who willfully, maliciously, and
 109 repeatedly follows, harasses, or cyberstalks a child ~~minor~~ under
 110 16 years of age commits the offense of aggravated stalking, a
 111 felony of the first ~~third~~ degree, punishable as provided in s.
 112 775.082, s. 775.083, or s. 775.084.

113 (6) A ~~Any~~ law enforcement officer may arrest, without a
 114 warrant, any person that he or she has probable cause to believe
 115 has violated ~~the provisions of~~ this section.

116 (7) A ~~Any~~ person who, after having been sentenced for a
 117 violation of s. 794.011, s. 800.04, or s. 847.0135(5) and
 118 prohibited from contacting the victim of the offense under s.
 119 921.244, willfully, maliciously, and repeatedly follows,
 120 harasses, or cyberstalks the victim commits the offense of
 121 aggravated stalking, a felony of the first ~~third~~ degree,
 122 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

123 (8) The punishment imposed under this section shall run
 124 consecutive to any former sentence imposed for a conviction for
 125 any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

126 (9) (a) The sentencing court shall consider, as a part of
 127 any sentence, issuing an injunction restraining the defendant
 128 from any contact with the victim, which may be valid for up to
 129 10 years, as determined by the court. It is the intent of the
 130 Legislature that the length of any such restraining order be
 131 based upon the seriousness of the facts before the court, the
 132 probability of future violations by the perpetrator, and the
 133 safety of the victim and his or her immediate family.

134 (b) The injunction may be issued by the court even if the
 135 defendant is sentenced to a state prison or a county jail or
 136 even if the imposition of the sentence is suspended and the
 137 defendant is placed on probation.

138 (10) If the court finds the defendant guilty of stalking
 139 or aggravated stalking under this section, the court shall order
 140 the defendant to attend a batterers' intervention program

141 | pursuant to s. 741.281.

142 | (11) There is created a cause of action for an injunction
 143 | for protection from stalking and aggravated stalking.

144 | (a) A person who is the victim of stalking or aggravated
 145 | stalking, or who is the parent or legal guardian of a child
 146 | younger than 16 years of age living at home and who seeks an
 147 | injunction for protection from stalking or aggravated stalking
 148 | on behalf of the child, has standing in the circuit court to
 149 | file a sworn petition for an injunction for protection from
 150 | stalking or aggravated stalking.

151 | (b) A cause of action for an injunction for protection
 152 | from stalking or aggravated stalking may be sought regardless of
 153 | whether another cause of action is available or pending between
 154 | the parties.

155 | (c) The sworn petition must allege the incidents of
 156 | stalking or aggravated stalking and include the specific facts
 157 | and circumstances that form the basis upon which relief is
 158 | sought.

159 | (d) The court may not require the petitioner to file a
 160 | bond upon the issuance of an injunction for protection from
 161 | stalking or aggravated stalking.

162 | (e) The clerk of the court shall provide the petitioner
 163 | with a certified copy of any injunction for protection from
 164 | stalking or aggravated stalking entered by the court.

165 | Section 2. Paragraphs (f) and (g) of subsection (3) of
 166 | section 921.0022, Florida Statutes, are amended to read:

167 | 921.0022 Criminal Punishment Code; offense severity
 168 | ranking chart.—

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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169	(3)	OFFENSE SEVERITY RANKING CHART		
170	(f)	LEVEL 6		
171				
	Florida	Felony		
	Statute	Degree	Description	
172	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.	
173	499.0051(3)	2nd	Knowing forgery of pedigree papers.	
174	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.	
175	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.	
176	775.0875(1)	3rd	Taking firearm from law enforcement officer.	
177	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.	
178	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	
179				

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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180	784.041	3rd	Felony battery; domestic battery by strangulation.
181	784.048 (3)	3rd	Aggravated stalking; credible threat.
182	784.048 (5)	<u>1st</u> 3rd	Aggravated stalking of person under 16.
183	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
184	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
185	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
186	784.081 (2)	2nd	Aggravated assault on specified official or employee.
187	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
188	784.083 (2)	2nd	Aggravated assault on code inspector.
189	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.

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190	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
191	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
192	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
193	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
194	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
195	794.05(1)	2nd	Unlawful sexual activity with specified minor.
196	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
197	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

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198	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
199	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
200	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
201	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
202	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
203	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
204	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
205	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular

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			telephones.
206	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
207	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
208	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
209	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
210	827.03(1)	3rd	Abuse of a child.
211	827.03(3)(c)	3rd	Neglect of a child.
212	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
213	836.05	2nd	Threats; extortion.
214	836.10	2nd	Written threats to kill or do bodily injury.
215			

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216	843.12	3rd	Aids or assists person to escape.
217	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
218	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
219	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
220	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
221	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
222	944.40	2nd	Escapes.
223	944.46	3rd	Harboring, concealing, aiding escaped prisoners.

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224	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
225	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
226	(g) LEVEL 7		
227			
228	Florida Statute	Felony Degree	Description
229	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
230	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
231	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
232	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.

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233	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
234	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
235	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
236	456.065(2)	3rd	Practicing a health care profession without a license.
237	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
238	458.327(1)	3rd	Practicing medicine without a license.
239	459.013(1)	3rd	Practicing osteopathic medicine without a license.
240	460.411(1)	3rd	Practicing chiropractic medicine without a license.
	461.012(1)	3rd	Practicing podiatric medicine without a

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			license.
241			
	462.17	3rd	Practicing naturopathy without a license.
242			
	463.015(1)	3rd	Practicing optometry without a license.
243			
	464.016(1)	3rd	Practicing nursing without a license.
244			
	465.015(2)	3rd	Practicing pharmacy without a license.
245			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
246			
	467.201	3rd	Practicing midwifery without a license.
247			
	468.366	3rd	Delivering respiratory care services without a license.
248			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
249			
	483.901(9)	3rd	Practicing medical physics without a license.
250			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
251			

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252	484.053	3rd	Dispensing hearing aids without a license.
253	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
254	560.123(8) (b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
255	560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
256	655.50(10) (b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
257	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

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258	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
259	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
260	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
261	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
262	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
263	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
264	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

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265	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
266	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
267	784.048(4)	<u>2nd</u> 3rd	Aggravated stalking; violation of injunction or court order.
268	784.048(7)	<u>1st</u> 3rd	Aggravated stalking; violation of court order.
269	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
270	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
271	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
272	784.081(1)	1st	Aggravated battery on specified official or employee.
273	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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274	784.083(1)	1st	Aggravated battery on code inspector.
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
275	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
276	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
277	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
278	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
279	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
280	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements

281			provided for in s. 874.04.
282	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
283	796.03	2nd	Procuring any person under 16 years for prostitution.
284	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
285	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
286	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
287	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
288	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.

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289	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
290	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
291	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
292	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
293	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
294	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
295	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
	812.019(2)	1st	Stolen property; initiates, organizes,

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			plans, etc., the theft of property and traffics in stolen property.
296			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
297			
	812.133(2)(b)	1st	Carjacking; no firearm, <u>deadly</u> weapon, or other weapon.
298			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
299			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
300			
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
301			
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
302			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
303			

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304	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
305	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
306	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
307	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
308	838.015	2nd	Bribery.
309	838.016	2nd	Unlawful compensation or reward for official behavior.
310	838.021(3)(a)	2nd	Unlawful harm to a public servant.
311	838.22	2nd	Bid tampering.
312	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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313	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
314	872.06	2nd	Abuse of a dead human body.
315	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
316	893.13(1)(c)1.	1st	Sell, manufacture; or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
317	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
	893.13(4)(a)	1st	Deliver to minor cocaine (or other s.

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893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).

318

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

319

893.135 1st Trafficking in cocaine, more than 28
(1)(b)1.a. grams, less than 200 grams.

320

893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

321

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.

322

893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

323

893.135(1)(f)1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.

324

893.135 1st Trafficking in flunitrazepam, 4 grams
(1)(g)1.a. or more, less than 14 grams.

325

893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.

326

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327	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
328	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
329	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
330	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
331	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
332	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
333	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

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334	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
335	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
336	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
337	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
338	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
339	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
340	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
341	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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342 985.4815(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

343 985.4815(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

344 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1143 Licensing of Health Care Practitioners
SPONSOR(S): Health & Human Services Quality Subcommittee; Costello and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	11 Y, 2 N, As CS	Mathieson	Calamas
2) Criminal Justice Subcommittee		Krol TK	Cunningham <i>all</i>
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1143 amends s. 456.074, F.S., providing authority for the Department of Health to enter an emergency order that removes the ability to prescribe controlled substances for a Medical Doctor, Osteopathic Physician, Podiatrist or Dentist who has:

- Committed, is arrested for, or is under criminal investigation or prosecution for, a violation of ch. 782, F.S., relating to homicide;
- Been arrested for, or is under criminal investigation or prosecution for, any act that relates to the importation, manufacture, distribution possession, transfer, sale, improper use, or prescribing of controlled substances, as defined by ch. 893, F.S., relating to substance abuse and prevention;
- Violated any federal law relating to possession, transfer, sale, or prescribing of controlled substances as defined in ch. 893, F.S., or 21 U.S.C. ss. 801-970, relating to controlled substances.

The bill amends s. 903.046, F.S., requiring a judge to consider, at a bail determination, whether suspension or restriction of a licensed health care practitioner's license is necessary to protect the community against unreasonable danger.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Boards

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety, and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.¹ Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

License Disciplinary Actions

Sections 456.072, 456.073 and 456.074 F.S., provide authority for a board to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Administration of a fine not to exceed \$10,000 per occurrence;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action;
- Imposition of an administrative fines for violations of patient rights;
- Refund of fees billed and collect from the patient or a third party on behalf of the patient; and
- Remedial education.²

The board can take action for any legally sufficient, written and signed complaint that is filed before it. S.456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act or any rule adopted by DOH or the relevant board. DOH has the authority to investigate a complaint, even if the original complainant withdraws or the complainant is anonymous.³ Further, DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute, or a rule of either the board or DOH.

The subject of an investigation has 20 days to respond in writing to the complaint or document after service.⁴ Whatever is submitted is considered by the probable cause panel of the respective board.⁵ The right to respond does not preclude the State Surgeon General from issuing a summary emergency order, if it is necessary to protect the public.⁶

¹ S. 456.001, F.S.

² S. 456.072(2)

³ S. 456.073(1), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

DOH has 6 months to complete an investigation and submit it to the appropriate probable cause panel.⁷ A determination as to probable cause is made by a majority vote of the panel.⁸ The panel may request additional investigative information from DOH, and this must be done within 15 days of receiving the investigative report from the department or agency.⁹ The panel has 30 days from receiving the final investigative report to make a determination of probable cause.¹⁰ The Surgeon General may grant extensions of these time limits.¹¹ If the panel does not make a determination within the statutory timeframe, DOH is directed to do so within 10 days of the expiration of the time limit.¹²

DOH is directed to follow the determination of the probable cause panel, and if probable cause exists is directed to file a formal complaint against the subject, and prosecute pursuant to ch. 120, F.S.¹³ DOH may decide not to prosecute if probable cause has been found improvidently, and refer the issue back to the appropriate board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S.¹⁴ Referrals to the Division of Administrative Hearings, must occur within 1 year of filing the complaint.¹⁵ Chapter 120, F.S., provides the practitioner with the right to appeal the action.

DOH is further directed to notify the person who filed the complaint, and if probable cause is not found, provide them with an opportunity 60 days from the determination, to bring additional information to the department.¹⁶

Emergency Orders

Section 120.60(6), F.S. provides DOH with broad authority to take disciplinary action in the case of immediate serious danger to the public health, safety or welfare. A license may be suspended, restricted, or limited on an emergency basis if:

- The procedure provides at least the same procedural protection as is given by other statutes, the state Constitution or the U.S. Constitution;
- The action is necessary to protect the public interest under the emergency procedure;
- There are specific facts that outline the finding of an immediate danger to public health, safety, or welfare and reasons for concluding the process was fair under the circumstances.

Section 456.074, F.S., provides DOH with separate authority from s. 120.60(6), F.S., to issue an emergency order suspending the license of certain health care practitioners under very specific circumstances. This **must** occur when:

- A medical doctor, doctor of osteopathy, chiropractor, podiatrist, naturopath, optometrist, nurse, pharmacist, dentist or hypnotist pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to:
 - A felony under:
 - Ch. 409, F.S., social and economic assistance;
 - Ch. 817, F.S., fraudulent practices;
 - Ch. 893, F.S., drug abuse prevention or control;
 - 21 U.S.C. ss 801-970, controlled substances; or
 - 42 U.S.C. ss1395-1396, Medicaid and Medicare.
 - A misdemeanor or felony under:
 - 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, crimes; or
 - 42 U.S.C. ss. 1320a-7b, Medicaid.

⁷ S. 456.073(2), F.S.

⁸ S. 456.073(4), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 456.073(9)(c), F.S.

DOH has discretionary authority pursuant s. 456.074, F.S., to issue an emergency order suspending or restricting the license of certain health care practitioners when:

- The board has found a physician or osteopathic physician in violation of s. 458.331(1)(t), F.S., or s. 459.015(1)(x), F.S., relating to medical malpractice, in regard to three or more patients and there is probable cause to find additional violations of these sections.
- A healthcare practitioner, as defined in s. 456.001(4), F.S., tests positive for a pre-employment or employer ordered drug test, when the practitioner does not have a lawful prescription and legitimate medical reason for using such a drug.
- A healthcare practitioner has defaulted on state or federally guaranteed student loans.¹⁷

While Florida law does not specify the interaction between these two sections, courts have interpreted s. 456.074, F.S., to operate independently of s. 120.60(6), F.S. Courts appear to interpret s. 456.074(1), F.S., in a way that is analogous to strict liability, such that the due process requirements of 120.60(6), F.S., including proof of immediate danger to public safety, do not apply. Courts that have interpreted s. 456.074, F.S., have applied subsection (1), which mandates the emergency suspension, as leaving DOH with no discretion.¹⁸ Subsection (3) of s. 456.074, F.S., for example, provides DOH with discretion as to an emergency suspension, and judicial interpretation of discretionary authority in this context is unclear.

Following the issuance of an emergency suspension, the person has an immediate right of appeal.¹⁹ An emergency suspension order is effective until it is overturned by an appellate court, vacated by the Surgeon General or superseded by a final order. DOH is required to initiate non-emergency administrative proceedings within 20 days of the emergency suspension.²⁰ DOH issued 326 emergency suspensions in FY 2010-11.²¹

To ensure compliance with such orders, each board has promulgated rules based on authority delegated by the Legislature.²² If a practitioner does not comply with the order, a petition can be made to the circuit court to enforce the order.²³

Bail

Pretrial release is an alternative to incarceration that allows an accused to be released from detention whilst they await disposition of the criminal charges. Article I, s. 24 of the Florida Constitution provides that unless a person is charged with a capital offense or one punishable by life and “the proof of guilt is evident or the presumption great,” every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. Further, there is a presumption in favor of release on nonmonetary conditions for any accused who is granted pre-trial release unless they are charged with a dangerous crime.²⁴

¹⁷ S. 456.074, F.S.

¹⁸ See *Mendelsohn v. Department of Health*, 68 So.3d 965 (Fla 1st DCA, 2011) (DOH could not issue emergency suspension because petitioner did not commit enumerated violation of s. 456.074(1), F.S.); *Bethencourt-Miranda v. Department of Health*, 910 So.2d 927, (Fla 1st DCA, 2005) (No findings were necessary for an emergency suspension for violation of 21 U.S.C. s. 846);

¹⁹ S. 120.569(n)(2), F.S.

²⁰ Rule 28-106.501, F.A.C. This rule implements the authority delegated to DOH in s. 120.60(6)(a), F.S., which directs the agency must provide for at least the same procedural protection as is given by other state statutes, the state constitution, and the federal constitution.

²¹ DOH analysis for HB 1143 (2012). On file with Health and Human Services Quality Subcommittee staff.

²² For Medical Doctors, the Board of Medicine has promulgated rules 64B8-8, F.A.C., pursuant to s. 458.331, F.S. For Osteopathic Physicians, the Board of Osteopathic Medicine has promulgated rules 64B15-19, F.A.C., pursuant to s. 456.072, F.S. For Podiatrists, the Board of Podiatric Medicine has promulgated rules 64B18-14, F.A.C., pursuant to s. 461.013, F.S. For Dentists, the Board of Dentistry has promulgated rules 64B5-13, F.A.C., pursuant to s. 466.028, F.S.

²³ *Id.*

²⁴ Dangerous crimes are described in s. 907.041(4)(a), F.S., and include offenses such as arson, aggravated assault, aggravated battery, child abuse, elder abuse, abuse of a disabled adult, kidnapping, homicide, manslaughter, sexual battery or other sex offenses, robbery, carjacking, stalking, terrorism and domestic violence.

Pretrial release is granted by a court in one of three ways; release on own recognizance, supervised pretrial release, or a bond.²⁵ Bail is a form pretrial release that requires an accused to pay a set sum of money to the court. If the accused released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., provides that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the person. In the determination of whether to release a criminal defendant on bail or other conditions, the judge must consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- Family ties, length of residence in the community, employment history, financial resources and mental condition;
- The defendant's past and present conduct;
- The nature and probability of danger that the defendant poses to the community, including intimidation and danger to victims;
- The course of funds used for bail, or to secure the bond;
- Whether the defendant is on release for another pending matter;
- The street value of the drug or controlled substance, if applicable to the case;
- Whether there is probable cause to believe the defendant committed a new crime whilst on pretrial release;
- Whether the crime charged is a violation of ch. 874, F.S., (relating to sexual battery); and
- Any other relevant factor.²⁶

Effect of Proposed Changes

House Bill 1143 amends s. 456.074, F.S., providing discretionary authority for the Department of Health, to enter an emergency order that removes the ability to prescribe controlled substances for a healthcare practitioner licensed under ch. 458, F.S., ch. 459, F.S., ch 461, F.S., or ch. 466. F.S., who has:

- Committed, been arrested for, or is under criminal investigation or prosecution for, an act which is a violation of ch. 782. F.S. (homicide);
- Been arrested or is under criminal investigation or prosecution for any act that relates to the importation,²⁷ manufacture,²⁸ distribution,²⁹ possession,³⁰ transfer, sale,³¹ improper use, or prescribing of controlled substances,³² as defined by ch. 893, F.S.; or
- Violated any federal law relating to possession, transfer, sale, or prescribing of a controlled substance as defined in ch. 893, F.S., or 21. U.S.C. ss. 801-970.

Once the emergency order has been issued, the practitioner has the right to appeal the decision, pursuant to s. 120.569(n)(2), F.S. The bill provides DOH with discretionary authority to issue an emergency suspension order based on the enumerated criteria. It is not clear how this discretionary authority will be interpreted by the courts.

²⁵ Bail is the security, such as a bond posted by a defendant to a trial court to secure their release from detention to appear in court at a future date. Black's Law Dictionary (9th Ed. 2009). S. 903.011(1), F.S., provides that bail and bond include any and all forms of pretrial release as used in ch. 903, F.S.

²⁶ S. 903.046, F.S.

²⁷ Chapter 893, F.S., makes a distinction between importation and trafficking, based on volume for controlled substances that are brought into the state. *See* s. 893.135, F.S.

²⁸ S. 893.13(1)(a), F.S. provides that except as authorized by this chapter and ch. 499, F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

²⁹ Means to deliver, other than by administering or dispensing, a controlled substance. S. 893.02(8), F.S.

³⁰ *Id.*

³¹ *Id.*

³² Means any substance named or described in Schedules I-V of s. 893.03, F.S. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws. S. 893.02(4), F.S.

The bill provides that a judge, when determining criteria for bail, shall determine whether the suspension of a license or a restriction on the ability to practice a licensed profession is necessary to protect the community against unreasonable danger. This provision applies to every profession regulated by the MQA, pursuant to the definition of "profession" s. 456.001, F.S. This provision does not give the judge the ability to suspend or restrict the license, only determine whether such an action is necessary to protect the community.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 456.074, F.S., relating to certain healthcare practitioners; immediate suspension or restriction of license.
Section 2: Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.
Section 3: Provides an effective date.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOH has sufficient rulemaking authority in s. 456.074, F.S., to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 31-34 direct a judge to determine whether the suspension or restriction of a license during bail hearing is necessary to protect the community against unreasonable danger. However, the language does not expressly authorize the judge to suspend or restrict, merely determine this as a component of bail.

The bill provides discretionary authority for DOH to enter an emergency order that removes the ability to prescribe controlled substances for a healthcare practitioner who has violated any federal law relating to possession, transfer, sale, or prescribing of a controlled substance. It is unclear whether the term "violated" is intended to refer to an arrest or a conviction.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Health & Human Services Quality subcommittee adopted a strike-all amendment to HB 1143. The amendment:

- Deleted the bill's provision authorizing DOH to issue an emergency order suspending a health care practitioner's license, replacing it with a provision authorizing DOH to issue an emergency order restricting certain health care practitioners from prescribing controlled substances under certain circumstances.
- If the health care practitioner has:
 - Committed, is arrested for, or is under investigation or prosecution for a violation of ch. 782, F.S., (homicide);
 - Been arrested for, or is under investigation or prosecution for any act that relates to the importation, manufacture, distribution possession, transfer, sale, improper use or prescribing controlled substances, as defined by ch. 893, F.S., relating to substance abuse and prevention;
 - Violated any federal law relating to possession, transfer, sale or prescribing of controlled substances as defined in ch. 893, F.S., or 21 U.S.C. ss. 801-970 relating to controlled substances.

This bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

1 A bill to be entitled
 2 An act relating to licensing of health care
 3 practitioners; amending s. 456.074, F.S.; authorizing
 4 the Department of Health to issue an emergency order
 5 to restrict the license of a health care practitioner
 6 under specified conditions; amending s. 903.046, F.S.;
 7 providing additional criteria that a court may
 8 consider when determining whether to release a
 9 defendant on bail; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (5) is added to section 456.074,
 14 Florida Statutes, to read:

15 456.074 Certain health care practitioners; immediate
 16 suspension or restriction of license.—

17 (5) The department may issue an emergency order
 18 restricting the license of any health care practitioner as
 19 defined in chapter 458, chapter 459, chapter 461, or chapter 466
 20 from prescribing any controlled substance as defined in chapter
 21 893 if the licensee has committed any act, is arrested for any
 22 act, or is under criminal investigation or criminal prosecution
 23 for any act that is a violation of chapter 782; or is arrested
 24 for any act or is under criminal investigation or criminal
 25 prosecution for any act that relates to the importation,
 26 manufacture, distribution, possession, transfer, sale, improper
 27 use, or prescribing of a controlled substance as defined in
 28 chapter 893, or is in violation of any federal law relating to

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29 | the possession, transfer, sale, or prescribing of a controlled
30 | substance as defined in chapter 893 or 21 U.S.C. ss. 801-970.

31 | Section 2. Paragraph (m) is added to subsection (2) of
32 | section 903.046, Florida Statutes, to read:

33 | 903.046 Purpose of and criteria for bail determination.—

34 | (2) When determining whether to release a defendant on
35 | bail or other conditions, and what that bail or those conditions
36 | may be, the court shall consider:

37 | (m) Whether the suspension of a license or the restriction
38 | on the ability to practice a licensed profession as defined in
39 | s. 456.001 is necessary to protect the community against
40 | unreasonable danger from the criminal defendant.

41 | Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1187 Sentencing Alternatives
SPONSOR(S): Perry
TIED BILLS: None IDEN./SIM. BILLS: SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>EM</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to the abuse of children), and who does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill may result in increased funding for local child protection teams. See "fiscal comments."

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Abuse of Children

Chapter 827, F.S., provides various criminal offenses relating to the abuse of children.¹ For example:

Child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.²

Child abuse is a third degree felony³ and occurs when a person knowingly and willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child. Specifically,

Aggravated child abuse is a first degree felony⁴ and occurs when a person:

- Commits aggravated battery on a child;
- Willfully tortures, maliciously⁵ punishes, or willfully and unlawfully cages a child; or
- Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.⁶

Neglect of a child occurs when:

- A caregiver's⁷ failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.⁸

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.⁹ Neglect of a child is a third degree felony when a person willfully or by culpable negligence neglects a child. However, it is a second degree felony¹⁰ when a person willfully or by culpable negligence neglects a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.

Child Protection Teams

The Department of Health Children's Medical Services Child Protection Team (CPT) Program is a medically directed, multidisciplinary statewide program designed to supplement the child protective

¹ Section 827.01(2), F.S., defines "child" as "any person under the age of 18 years."

² Section 827.03(1), F.S.

³ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁴ Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁵ For purposes of this section, "maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury. Section 827.03(4), F.S.

⁶ Section 827.03(2), F.S.

⁷ Section 827.01(1), F.S., defines "caregiver" as "a parent, adult household member, or other person responsible for a child's welfare."

⁸ Section 827.03(3)(a), F.S.

⁹ Section 827.03(3)(a), F.S.

¹⁰ Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

investigation activities of local Sheriff's offices and the Department of Children and Family Services (DCFS) in complex cases of child abuse and neglect.¹¹ Section 39.303, F.S., authorizes the Children's Medical Services (CMS) Program within the Department of Health (DOH) to develop, maintain, and coordinate CPT services through contracts with local community-based programs. Twenty-two CPTs, some with satellite offices, provide these services to all children in the state meeting criteria for referral.

A CPT provides consultation to DCFS programs and other persons regarding child abuse, abandonment, and neglect cases.¹² All child abuse and neglect cases transmitted to child protection investigation by the child abuse hotline must be simultaneously transmitted to a CPT for review.¹³ The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a CPT is capable of providing include, but are not limited to, the following:

- Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
- Telephone consultation services in emergencies and in other situations.
- Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of DOH.
- Psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.
- Expert medical, psychological, and related professional testimony in court cases.
- Case staffings to develop treatment plans for children whose cases have been referred to the team.
- Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- Training services for program and other employees of DCFS, employees of DOH, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.
- Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens to prevent, identify, and treat child abuse, abandonment, and neglect in the community.
- CPT assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.¹⁴

Sentencing Alternatives

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation,¹⁵ and include:

- Requiring an offender who violates ch. 893, F.S.,¹⁶ or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.¹⁷
- Requiring an offender who violates any criminal provision of ch. 893, F.S., to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21¹⁸ and 938.23.^{19,20}

¹¹ "Children's Medical Services: Child Protection Team" Department of Health. <http://www.doh.state.fl.us/cms/HProviderPICPT.html> (last visited January 27, 2012).

¹² Section 39.01(13), F.S.

¹³ Section 39.303(3), F.S.

¹⁴ Section 39.303(1), F.S.

¹⁵ Section 921.187(1), F.S.

¹⁶ Chapter 893, F.S., relates to drug abuse prevention and control.

¹⁷ Section 921.187(k), F.S.

¹⁸ Section 938.21, F.S., relates to alcohol and drug abuse programs.

¹⁹ Section 938.23, F.S., relates to assistance grants for alcohol and other drug abuse programs.

²⁰ Section 921.187(1)1., F.S.

- Requiring an offender who violates any provision of s. 893.13, F.S.,²¹ to pay an additional assessment in an amount of \$100, pursuant to ss. 938.25²² and 943.361, F.S.^{23,24}
- Requiring residence in a state probation and restitution center or private drug treatment program for offenders on community control or offenders who have violated conditions of probation.²⁵

Effect of the Bill

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to child abuse), and does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.187, F.S., disposition and sentencing; alternatives; restitution.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments."

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments."

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "fiscal comments."

D. FISCAL COMMENTS:

The Child Protection Team (CPT) Program is funded by the Legislature through the Department of Health's (DOH) Children's Medical Services program office, which contracts with local providers for team services.²⁶ Providers currently under contract with DOH include non-profit agencies, hospitals, universities, and county governments.²⁷

²¹ Section 893.13, relates to various controlled substance penalties.

²² Section 938.25, F.S., relates to operating Trust Fund of the Department of Law Enforcement.

²³ Section 943.361, F.S., relates to statewide criminal analysis laboratory system; funding through fine surcharges.

²⁴ Section 921.187(1)2., F.S.

²⁵ Section 921.187(o), F.S.

²⁶ Child Protection Team Program Policy and Procedure Handbook. June 2009. http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf (last visited January 27, 2012).

²⁷ *Id.*

The bill requires offenders who violate any criminal provision of ch. 827, F.S., to pay an additional assessment of \$250 to the CPT in the judicial circuit in which the alternative sentence is imposed. The bill may have a positive fiscal impact on any of the above named entities to the extent that they are contracted as a CPT.

Persons who violate any criminal provision of ch. 827, F.S., and who are sentenced to the alternative proposed by the bill will be required to pay an additional \$250 fee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the \$250 assessment to be paid to the child protection team in the judicial circuit in which the alternative sentence is imposed. The Department of Health reports that there may be instances where there are more than one child protection team in a judicial circuit.²⁸ The bill does not specify how the assessment will be paid in these instances.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁸ E-mail from Brenda Ferrell, Department of Health, January 27, 2012. (On file with Criminal Justice Subcommittee staff).
STORAGE NAME: h1187.CRJS.DOCX
DATE: 1/26/2012

1 A bill to be entitled
 2 An act relating to sentencing alternatives; amending
 3 s. 921.187, F.S.; authorizing the court to order an
 4 offender convicted of an offense of child abuse to pay
 5 an assessment of a specified amount if the offender
 6 does not receive a state prison sentence; requiring
 7 that the assessment be allocated to the child
 8 protection team in the judicial circuit in which the
 9 alternative sentence is imposed; providing an
 10 effective date.

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

13
 14 Section 1. Paragraph (r) is added to subsection (1) of
 15 section 921.187, Florida Statutes, to read:

16 921.187 Disposition and sentencing; alternatives;
 17 restitution.—

18 (1) The alternatives provided in this section for the
 19 disposition of criminal cases shall be used in a manner that
 20 will best serve the needs of society, punish criminal offenders,
 21 and provide the opportunity for rehabilitation. If the offender
 22 does not receive a state prison sentence, the court may:

23 (r) Require the offender who violates any criminal
 24 provision of chapter 827 to pay an additional assessment in the
 25 amount of \$250 to the child protection team in the judicial
 26 circuit in which the alternative sentence is imposed.

27 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1331 Property Fraud
SPONSOR(S): Wood
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 996

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>SK</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill creates s. 817.535, F.S., entitled "fraudulent creation of interest in real or personal property." The bill makes it a third degree felony for a person, with the intent to defraud another, to knowingly file or cause to be filed with the clerk of a circuit court any document that contains a material misstatement, misrepresentation, or omission of fact. Such documents include, but are not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

The bill may have a minimal fiscal impact on the Office of the State Courts Administrator because a few more cases may be filed as a result of the specific provisions of the bill.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates a new third degree felony, it may have a negative prison impact on the Department of Corrections.

The bill is effective on October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Recording Act

Section 695.01, F.S., requires that any conveyance, transfer, mortgage, or other interest in real property be recorded in the public records of the county where the property is located. Every state in the United States has an analogous statutory recording system making information about interests in property available to the public.¹ The purpose of a public recording system for land titles is to allow access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title.² Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital.³

Section 28.222(1), F.S., requires the clerk of the circuit court to record all of the instruments, such as deeds, liens, mortgages, etc., in the county where he or she is clerk. The clerk must record instruments presented to him or her for recording upon payment of the service charges prescribed by law.⁴ Florida law does not require the clerk to investigate the accuracy of any such instruments he or she records.

Fraud

Chapter 817, F.S., covers a variety of fraudulent practices. Section 817.54, F.S., makes it a third degree felony⁵ for a person to obtain a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Other chapters contain similar penalties specific to liens. For example, s. 713.31(3), F.S., makes it is a third degree felony for a person to fraudulently file a construction lien. A construction lien is considered fraudulent if the lienor purposely exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.⁶

Fraudulent Recording of Deeds

Florida law offers redress for a property owner where a fraudulent deed is recorded with respect to his or her property. A property owner who has a fraudulent deed recorded on his or her property may pursue a suit to quiet title, which is "an equitable action that involves clearing a title of an invalid charge against the title."⁷ The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.⁸ A property owner may also choose to sue for slander of title, a tort action for which damages may be recovered.⁹ A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.¹⁰

Effect of the Bill

The bill creates s. 817.535, F.S., entitled "fraudulent creation of an interest in real or personal property." The bill makes it a third degree felony for a person, with the intent to defraud another, to knowingly file or cause to be filed with the clerk of a circuit court any document that contains a material misstatement, misrepresentation, or omission of fact.

¹ Jesse Dukeminier and James E. Krier, *PROPERTY*, 662 (5th ed. 2002).

² *Id.*

³ *Id.*

⁴ Section 28.222(3), F.S.

⁵ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁶ Section 713.31(2)(a), F.S.

⁷ 65 AM. JUR. 2d, *Quieting Title and Determination of Adverse Claims* s. 2 (2011).

⁸ Section 86.081, F.S.; see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984) (citing *State ex rel. Royal Ins. Co. v. Barrs*, 99 So. 668 (Fla. 1924)).

⁹ *Id.*

¹⁰ *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566, 575 (Fla. 4th DCA 2008).

The bill describes the term "document" as including, but not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.535, F.S., relating to fraudulent creation of interest in real or personal property.

Section 2. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates a new third degree felony, it may have a negative prison impact on the Department of Corrections.

According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal fiscal impact because a few more cases may be filed as a result of the specific provisions of the bill. OSCA does not anticipate a large impact on judicial workload because existing law essentially covers the behavior the bill prohibits.¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹¹ Office of the State Courts Administrator, 2012 Judicial Impact Statement, SB 996 (Dec. 7, 2011) (on file with the House Criminal Justice Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The use of commas in the list of documents in lines 24-28 makes it unclear what types of documents are included.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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29 material misstatement, misrepresentation, or omission of fact,
30 commits the offense of fraudulent creation of an interest in
31 real or personal property.

32 (2) A person who violates subsection (1) commits a felony
33 of the third degree, punishable as provided in s. 775.082, s.
34 775.083, or s. 775.084.

35 Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 Child Pornography
SPONSOR(S): Trujillo
TIED BILLS: None IDEN./SIM. BILLS: SB 1618

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cunningham, Cunningham.

SUMMARY ANALYSIS

Section 827.071, F.S, establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
• Subsection (5) makes it a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed. The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view.

The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
• "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate prison bed impact on the Department of Corrections.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Performance by a Child

Section 827.071, F.S, establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony¹ for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
- Subsection (5) makes it a third degree felony² for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

The statute provides the following definitions that apply to the above-listed offenses:

- "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."
- "Simulated" means the explicit depiction of conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³

Federal Law – Child Pornography

18 U.S.C. 2256 defines "child pornography" as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

"Identifiable minor" is defined as a person:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristics, such as unique birthmark or other recognizable feature.⁴

The term "identifiable minor" shall not be construed to require proof of the actual identity of the identifiable minor.⁵

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

² A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 827.071(1), F.S.

⁴ 18 U.S.C. 2256(9).

⁵ *Id.*

Recent Caselaw

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed.⁶ The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."⁷

The dissent noted that the definition of "sexual conduct" included "*simulated* sexual intercourse, sexual bestiality, and masturbation," and concluded that "simulated sexual conduct by a child" included composites made by attaching children's heads to adult bodies engaged in sexual activity. The majority disagreed, citing a United States Supreme Court decision construing the word "simulated," which held that "a reasonable viewer [must] believe that the actors actually engaged in that conduct on camera" and "although the sexual intercourse may be simulated, it must involve actual children."⁸

In reversing the trial court's decision, the Second District Court of Appeal also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.⁹ The latest iteration,¹⁰ defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are "indistinguishable" from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.¹¹ After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that "if our legislature wants to follow Congress's example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute."¹²

Effect of the Bill

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view. The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
- "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

The bill amends s. 775.0847, F.S., which reclassifies violations of s. 827.071, F.S., (and other sexual offenses) to the next higher degree of felony in specified instances, to include the above-described definitions.

⁶ *Parker v. State*, 2011 WL 4467635 (Fla. 2nd DCA 2011).

⁷ *Id.* at 2.

⁸ *Id.* at 2, citing *United States v. Williams*, 553 U.S. 285 at 297 (2008).

⁹ *Supra* note 4 at 4-5.

¹⁰ The PROTECT Act of 2003, Public Law 108-21, April 30, 2003.

¹¹ *Supra* note 4 at 4-5. *Also see*, 18 U.S.C. 2256(8)(b) and (c).

¹² *Supra* note 4 at 4-5.

The bill also makes conforming changes to s. 921.0022, F.S. (the offense severity ranking chart), and reenacts s. 794.0115, F.S. (dangerous sexual felony offender; mandatory sentencing), to incorporate the bill's changes to s. 827.071, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.

Section 2. Amends s. 827.071, F.S., relating to sexual performance by a child; penalties.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Reenacts s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.

Section 5. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The First Amendment to the United States Constitution provides that "Congress shall make no law ...abridging the freedom of speech." However, the United States Supreme Court has held that child pornography is unprotected by the First Amendment and that states have greater leeway in regulating it than other obscenity or adult pornography. This is so because of the compelling state interest in the prevention of sexual exploitation of children and child abuse.¹³ In contrast, "sexual expression which is indecent but not obscene is protected by the First Amendment...."¹⁴

As explained by the Florida Supreme Court, "the doctrines of overbreadth and vagueness are separate and distinct."¹⁵ The overbreadth doctrine applies only if the legislation is susceptible of application to conduct protected by the First Amendment.¹⁶ The overbreadth doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.¹⁷ As the United States Supreme Court has explained, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁸ Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.¹⁹

The vagueness doctrine has a broader application because it was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution.²⁰ A criminal law may violate due process if it fails to give a potential offender fair notice that his or her contemplated conduct is forbidden or if it encourages arbitrary enforcement and gives the police too much discretion in determining whether it is applicable to a particular individual.²¹ When the law fails these tests, it is "void for vagueness."²² Because of its imprecision, a vague statute may also invite arbitrary or discriminatory enforcement.²³ A statute is not void for vagueness if the language conveys a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."²⁴ However, the Supreme Court has indicated that a statute that lends itself to arbitrary enforcement can be void for vagueness even if it gives fair notice of what conduct it prohibits.²⁵ Further, the need for definiteness is even greater when the ordinance imposes criminal penalties on individual behavior or when it implicates constitutionally protected rights.²⁶

As noted above, the definition of "child pornography" contained in 18 U.S.C. 2256 has been amended numerous times throughout the past decade to broaden its reach. As expected, there has been extensive caselaw relating to these various versions of the definition. In many instances, the definition as applied to what is commonly referred to as "morphed" images of child pornography, has been held to be unconstitutionally overbroad.²⁷ To date, the most recent version of the definition as applied to morphed images has been upheld.²⁸

¹³ *State v. Beckman*, 547 So.2d 210 (Fla. 5th DCA 1989). Also see, *New York v. Ferber*, 458 U.S. 747 (1982).

¹⁴ *Simmons v. State*, 944 So.2d 317, 323 (Fla. 2006)(quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

¹⁵ *Southeastern Fisheries Ass'n v. Dep't of Natural Res.*, 453 So.2d 1351, 1353 (Fla.1984).

¹⁶ *Id.*

¹⁷ See *City of Daytona Beach v. Del Percio*, 476 So.2d 197, 202 (Fla.1985).

¹⁸ *NAACP v. Button*, 371 U.S. 415, 433 (1963).

¹⁹ *Firestone v. News-Press Publ'g Co.*, 538 So.2d 457, 459 (Fla.1989).

²⁰ See *Simmons*, 944 So.2d at 324. Florida's Constitution includes a similar due process guarantee in Article I, Section 9.

²¹ See *Simmons*, 944 So.2d at 324.

²² See *Simmons*, 944 So.2d at 324 (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972)).

²³ See *Southeastern Fisheries*, 453 So.2d at 1353.

²⁴ *Hitchcock v. State*, 413 So.2d 741, 747 (Fla.1982)(quoting *United States v. Petrillo*, 332 U.S. 1, 8 (1947)).

²⁵ See *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)(stating that the "more important aspect of the vagueness doctrine is not actual notice, but the ... requirement that a legislature establish minimal guidelines to govern law enforcement").

²⁶ See *Simmons*, 944 So.2d at 324.

²⁷ See *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

²⁸ See, e.g., *United States v. Hotaling*, 599 F.Supp.2d 306 (N.D.N.Y 2008)(holding that federal statute prohibiting possession of morphed images was not unconstitutionally overbroad or vague); *affirmed by*, 634 F.3d 725; *cert. denied*, 2011 WL 2174374 (2011).

The bill amends s. 827.071, F.S., to add “child pornography” to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view, and defines “child pornography” as:

Any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.

Although this definition largely mirrors the definition found in 18 U.S.C. 2256, which has thus far been upheld, it may subject the offenses in s. 827.071, F.S., that involve “child pornography” to overbreadth and vagueness challenges. As noted in a decision by Florida’s 2nd DCA interpreting the current definition of child pornography in s. 827.071, F.S.,²⁹ “[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. We leave for another day a discussion of the constitutionality of such a provision.”

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 847, F.S., relating to obscenity, contains a variety of offenses that specifically relate to child pornography. Chapter 847, F.S., defines “child pornography” as “any image depicting a minor³⁰ engaged in sexual conduct.”³¹ The term “sexual conduct” is defined as:

Actual or simulated³² sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”³³

The bill does not change any of the definitions in ch. 847, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁹ *Stelmack v. State*, 58 So.3d 874, at 876 (Fla. 2nd DCA 2010).

³⁰ The term “minor” is defined as any person under the age of 18 years. Section 847.001(8), F.S.

³¹ Section 847.001(3), F.S.

³² The term “simulated” is defined as the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks. Section 847.001(19), F.S.

³³ Section 847.001(16), F.S.

1 A bill to be entitled
 2 An act relating to child pornography; amending s.
 3 775.0847, F.S.; revising the definition of the term
 4 "child pornography" to include visual depictions in
 5 which it appears that a minor is engaging in sexual
 6 conduct; providing that proof of the identity of a
 7 minor is not required; defining the term "minor";
 8 amending s. 827.071, F.S.; defining the terms "child
 9 pornography" and "minor"; conforming cross-references;
 10 including possession of child pornography within
 11 specified offenses; providing penalties; amending s.
 12 921.0022, F.S.; conforming provisions of the offense
 13 severity ranking chart of the Criminal Punishment Code
 14 to changes made by the act; reenacting s. 794.0115(2),
 15 F.S., relating to dangerous sexual felony offenders
 16 and mandatory sentencing thereof, to incorporate the
 17 amendment to s. 827.071, F.S., in references thereto;
 18 providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraph (b) of subsection (1) of section
 23 775.0847, Florida Statutes, is amended, a new paragraph (c) is
 24 added to that subsection, and present paragraphs (c) through (f)
 25 of that subsection are redesignated as paragraphs (d) through
 26 (g), respectively, to read:

27 775.0847 Possession or promotion of certain images of
 28 child pornography; reclassification.—

29 (1) For purposes of this section:

30 (b) "Child pornography" means any image depicting a minor
 31 engaged in sexual conduct or such visual depiction that has been
 32 created, adapted, or modified to appear that a minor is engaging
 33 in sexual conduct. Proof of the identity of the minor is not
 34 required in order to find a violation of this section.

35 (c) "Minor" means a person who had not attained the age of
 36 18 years at the time the visual depiction was created, adapted,
 37 or modified, or whose image while a minor was used in creating,
 38 adapting, or modifying the visual depiction, and who is
 39 recognizable as an actual person by the person's facial
 40 features, likeness, or other distinguishing characteristics.

41 Section 2. New paragraphs (a) and (d) are added to
 42 subsection (1) of section 827.071, Florida Statutes, present
 43 paragraphs (a) through (j) of that subsection are redesignated
 44 as paragraphs (b), (c), and (e) through (l) of that subsection,
 45 respectively, and present paragraph (j) of subsection (1),
 46 subsection (4), and paragraph (a) of subsection (5) of that
 47 section are amended, to read:

48 827.071 Sexual performance by a child; penalties.—

49 (1) As used in this section, the following definitions
 50 shall apply:

51 (a) "Child pornography" means any visual depiction,
 52 including, but not limited to, any photograph, film, video,
 53 picture, computer or computer-generated image or picture, or
 54 digitally created image or picture, whether made or produced by
 55 electronic, mechanical, or other means, of sexual conduct, where
 56 the production of such visual depiction involves the use of a

57 minor engaging in sexual conduct, or such visual depiction has
 58 been created, adapted, or modified to appear that a minor is
 59 engaging in sexual conduct. Proof of the identity of the minor
 60 is not required in order to find a violation of this section.

61 (d) "Minor" has the same meaning as provided in s.
 62 775.0847.

63 (1)(j) "Simulated" means the explicit depiction of conduct
 64 set forth in paragraph (j) ~~(h)~~ which creates the appearance of
 65 such conduct and which exhibits any uncovered portion of the
 66 breasts, genitals, or buttocks.

67 (4) It is unlawful for any person to possess with the
 68 intent to promote any child pornography or any other photograph,
 69 motion picture, exhibition, show, representation, or other
 70 presentation which, in whole or in part, includes any sexual
 71 conduct by a child. The possession of three or more copies of
 72 such photograph, motion picture, representation, or presentation
 73 is prima facie evidence of an intent to promote. Whoever
 74 violates this subsection commits ~~is guilty of~~ a felony of the
 75 second degree, punishable as provided in s. 775.082, s. 775.083,
 76 or s. 775.084.

77 (5)(a) It is unlawful for any person to knowingly possess,
 78 control, or intentionally view child pornography or any other a
 79 photograph, motion picture, exhibition, show, representation,
 80 image, data, computer depiction, or other presentation which, in
 81 whole or in part, he or she knows to include any sexual conduct
 82 by a child. The possession, control, or intentional viewing of
 83 each such photograph, motion picture, exhibition, show, image,
 84 data, computer depiction, representation, or presentation is a

85 separate offense. A person who violates this paragraph
 86 ~~subsection~~ commits a felony of the third degree, punishable as
 87 provided in s. 775.082, s. 775.083, or s. 775.084.

88 Section 3. Paragraph (e) of subsection (3) of section
 89 921.0022, Florida Statutes, is amended to read:

90 921.0022 Criminal Punishment Code; offense severity
 91 ranking chart.—

- 92 (3) OFFENSE SEVERITY RANKING CHART
- 93 (e) LEVEL 5

94	Florida Statute	Felony Degree	Description
95	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
96	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
97	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
98	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
99			

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100	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
101	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
102	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
103	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
104	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$ <u>100,000</u> .
105	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
106	790.01(2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge

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107			destructive device.
108	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
109	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
110	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
111	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
112	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
113	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
114	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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115	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
116	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
117	812.131(2)(b)	3rd	Robbery by sudden snatching.
118	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
119	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
120	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal

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identification information;
 value of benefit, services
 received, payment avoided, or
 amount of injury or fraud,
 \$5,000 or more or use of
 personal identification
 information of 10 or more
 individuals.

122

817.625(2)(b) 2nd Second or subsequent fraudulent
 use of scanning device or
 reencoder.

123

825.1025(4) 3rd Lewd or lascivious exhibition
 in the presence of an elderly
 person or disabled adult.

124

827.071(4) 2nd Possess with intent to promote
 any child pornography or other
 photographic material, motion
 picture, etc., which includes
 sexual conduct by a child.

125

827.071(5) 3rd Possess, control, or
 intentionally view any child
pornography or other
 photographic material, motion

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126			picture, etc., which includes sexual conduct by a child.
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
127			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
128			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
129			
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
130			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
131			
	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

132	893.13(1)(a)1.	2nd	<p>offense.</p> <p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>
133	893.13(1)(c)2.	2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
134	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
135			

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136	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
137	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.</p>
138	893.13(4)(b)	2nd	<p>Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).</p>
	893.1351(1)	3rd	<p>Ownership, lease, or rental for trafficking in or manufacturing</p>

of controlled substance.

139

140 Section 4. For the purpose of incorporating the amendment
 141 made by this act to section 827.071, Florida Statutes, in
 142 references thereto, subsection (2) of section 794.0115, Florida
 143 Statutes, is reenacted to read:

144 794.0115 Dangerous sexual felony offender; mandatory
 145 sentencing.-

146 (2) Any person who is convicted of a violation of s.
 147 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
 148 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
 149 (4); or s. 847.0145; or of any similar offense under a former
 150 designation, which offense the person committed when he or she
 151 was 18 years of age or older, and the person:

152 (a) Caused serious personal injury to the victim as a
 153 result of the commission of the offense;

154 (b) Used or threatened to use a deadly weapon during the
 155 commission of the offense;

156 (c) Victimized more than one person during the course of
 157 the criminal episode applicable to the offense;

158 (d) Committed the offense while under the jurisdiction of
 159 a court for a felony offense under the laws of this state, for
 160 an offense that is a felony in another jurisdiction, or for an
 161 offense that would be a felony if that offense were committed in
 162 this state; or

163 (e) Has previously been convicted of a violation of s.
 164 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
 165 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or

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166 (4); s. 847.0145; of any offense under a former statutory
 167 designation which is similar in elements to an offense described
 168 in this paragraph; or of any offense that is a felony in another
 169 jurisdiction, or would be a felony if that offense were
 170 committed in this state, and which is similar in elements to an
 171 offense described in this paragraph,

172
 173 is a dangerous sexual felony offender, who must be sentenced to
 174 a mandatory minimum term of 25 years imprisonment up to, and
 175 including, life imprisonment.

176 Section 5. This act shall take effect October 1, 2012.



Criminal Justice Subcommittee

Tuesday January 31, 2012

12:30 PM

404 HOB

AMENDMENT PACKET

**Dean Cannon
Speaker**

**Gayle Harrell
Chair**

Amendment No. 1

20 (c) Before a juvenile offender may be eligible for
21 resentencing under this subsection, she or he must have served
22 25 years of incarceration for the offense for which resentencing
23 is sought. The initial resentencing hearing and any subsequent
24 resentencing hearing may occur only if the juvenile offender has
25 received no approved disciplinary reports for at least 3 years
26 before the scheduled resentencing hearing.

27 (d) The Department of Corrections shall screen juvenile
28 offenders committed to the department for eligibility criteria
29 in paragraph (c), to participate in a resentencing hearing. For
30 any juvenile offender who meets the eligibility requirements,
31 the department shall request the court of original jurisdiction
32 to hold a resentencing hearing.

33 (e) In determining whether the juvenile offender has
34 demonstrated maturity and reform and whether she or he should be
35 resentenced, the sentencing court must consider all of the
36 following:

37 1. Whether the juvenile offender remains at the same level
38 of risk to society as he or she had at the time of the initial
39 sentencing.

40 2. The wishes of the victim or the opinions of the
41 victim's next of kin. The absence of the victim or victim's next
42 of kin from the resentencing hearing shall not be a factor in
43 the court's determination under this section.

44 3. Whether the juvenile offender was a relatively minor
45 participant in the criminal offense or acted under extreme
46 duress or domination of another person.

47 4. Whether the juvenile offender has shown sincere and

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Amendment No. 1

48 sustained remorse for the criminal offense.

49 5. Whether the juvenile offender's age, maturity, and
50 psychological development at the time of the offense affected
51 her or his behavior.

52 6. Whether the juvenile offender, while in the custody of
53 the department, has aided inmates suffering from catastrophic or
54 terminal medical, mental, or physical conditions or has
55 prevented risk or injury to staff, citizens, or other inmates.

56 7. Whether the juvenile offender has successfully
57 completed any General Educational Development or other
58 educational, technical, work, vocational, or self-rehabilitation
59 program.

60 8. Whether the juvenile offender was a victim of sexual,
61 physical, or emotional abuse before she or he committed the
62 offense.

63 9. The results of any mental health assessment, risk
64 assessment, or evaluation of the juvenile offender.

65 10. The facts and circumstances of the offense for which
66 the life sentence was imposed including the severity of the
67 offense.

68 11. Any factor which the sentencing court may have taken
69 into account at the initial sentencing hearing in relation to
70 all other considerations listed in the his section which may be
71 relevant to the court's determination.

72 (f) If the court determines at the resentencing hearing
73 that the juvenile offender can reasonably be believed to be fit
74 to reenter society, the court must issue an order modifying the
75 sentence imposed and placing the offender on probation for a

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Amendment No. 1

76 | term of at least 5 years. If the juvenile offender violates the
77 | conditions of his or her probation, the court may revoke
78 | probation and impose any sentence that it might have originally
79 | imposed. After which, the juvenile offender is no longer
80 | eligible for resentencing hearings pursuant to this section.

81 | (g) A juvenile offender who is not resentenced under this
82 | section at the initial resentencing hearing is eligible for a
83 | resentencing hearing 7 years after the date of the denial and
84 | every 7 years thereafter.

85 | Section 3. This act shall take effect upon becoming a law.
86 |
87 |

88 | -----
89 | **T I T L E A M E N D M E N T**

90 | Remove the entire title and insert:

91 | An act relating to juvenile offenders; providing a short title;
92 | providing definitions; providing that a juvenile offender who
93 | was less than 18 years of age at the time of commission of a
94 | nonhomicide offense and who is sentenced to life imprisonment is
95 | eligible for resentencing if the offender has been incarcerated
96 | for a minimum period; requiring an initial resentencing hearing
97 | to determine whether the juvenile offender has demonstrated
98 | maturity and reform for resentencing; providing criteria to
99 | determine maturity and reform; requiring a term of at least 5
100 | years probation for any juvenile offender resentenced by the
101 | court; providing eligibility for a subsequent resentencing
102 | hearing after a specified period for juvenile offenders denied
103 | resentencing; providing an effective date.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 137 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Ahern offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 45-100 and insert:

7 this section. However, this section does not create, expand, or
8 authorize any civil cause of action for negligence or wrongful
9 death in any fetus that is not born alive, except as provided by
10 this section for vehicular homicide.

11 (4) In addition to any other punishment, the court may
12 order the person to serve 120 community service hours in a
13 trauma center or hospital that regularly receives victims of
14 vehicle accidents, under the supervision of a registered nurse,
15 an emergency room physician, or an emergency medical technician
16 pursuant to a voluntary community service program operated by
17 the trauma center or hospital.

18 Section 3. Section 782.09, Florida Statutes, is amended to
19 read:

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 137 (2012)

Amendment No. 1

20 782.09 Killing of unborn ~~quick~~ child by injury to mother.-

21 (1) The unlawful killing of an unborn ~~quick~~ child, by any
22 injury to the mother of such child which would be murder if it
23 resulted in the death of such mother, shall be deemed murder in
24 the same degree as that which would have been committed against
25 the mother. Any person, other than the mother, who unlawfully
26 kills an unborn ~~quick~~ child by any injury to the mother:

27 (a) Which would be murder in the first degree constituting
28 a capital felony if it resulted in the mother's death commits
29 murder in the first degree constituting a capital felony,
30 punishable as provided in s. 775.082.

31 (b) Which would be murder in the second degree if it
32 resulted in the mother's death commits murder in the second
33 degree, a felony of the first degree, punishable as provided in
34 s. 775.082, s. 775.083, or s. 775.084.

35 (c) Which would be murder in the third degree if it
36 resulted in the mother's death commits murder in the third
37 degree, a felony of the second degree, punishable as provided in
38 s. 775.082, s. 775.083, or s. 775.084.

39 (2) The unlawful killing of an unborn ~~quick~~ child by any
40 injury to the mother of such child which would be manslaughter
41 if it resulted in the death of such mother is ~~shall be deemed~~
42 manslaughter. A person who unlawfully kills an unborn ~~quick~~
43 child by any injury to the mother which would be manslaughter if
44 it resulted in the mother's death commits manslaughter, a felony
45 of the second degree, punishable as provided in s. 775.082, s.
46 775.083, or s. 775.084.

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47 (3) The death of the mother resulting from the same act or
48 criminal episode that caused the death of the unborn ~~quick~~ child
49 does not bar prosecution under this section.

50 (4) This section does not authorize the prosecution of ~~any~~
51 ~~person in connection with a termination of pregnancy pursuant to~~
52 ~~chapter 390:~~

53 (a) Any person for conduct relating to a termination of
54 pregnancy pursuant to chapter 390 for which consent of the
55 pregnant woman, or a person authorized by law to act on her
56 behalf, has been obtained or for which such consent is implied
57 by law; or

58 (b) Any person for any medical treatment of the pregnant
59 woman or her unborn child.

60 (5) For purposes of this section, the definition of the
61 term "unborn ~~quick~~ child" shall be determined in accordance with
62 the definition of an unborn child ~~viable fetus~~ as set forth in
63 s. 782.071.

64 (6) An offense under this section does not require:

65 (a) That the person engaging in the conduct:

66 1. Had knowledge or should have had knowledge that the
67 mother was pregnant; or

68 2. Intended to cause the death of, or bodily injury to,
69 the unborn child.

70 (b) The death of the mother.

71 (7) This section does not create, expand, or authorize any
72 civil cause of action for negligence or wrongful death based on
73 statute or common law for any fetus that is not born alive.

COMMITTEE/SUBCOMMITTEE AMENDMENT

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75

76

77

78

T I T L E A M E N D M E N T

79

Remove lines 8-11 and insert:

80

s. 782.09, F.S.; providing exemptions from prosecution; revising

81

terminology; providing that certain offenses relating to the

82

killing of an unborn child by injury to the mother do not

83

require specified knowledge or intent or death of the mother;

84

providing legislative intent; amending

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 455 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Glorioso offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (i) of subsection (2), paragraph (a)
8 of subsection (4), subsections (6) and (8), and paragraph (a) of
9 subsection (10) of section 775.21, Florida Statutes, are amended
10 to read:

11 775.21 The Florida Sexual Predators Act.—

12 (2) DEFINITIONS.—As used in this section, the term:

13 (i) "Internet identifier ~~Instant message name~~" means all
14 electronic mail, chat, instant messenger, social networking, or
15 similar name used for Internet communication, but does not
16 include a date of birth, social security number, or personal
17 identification number (PIN). Voluntary disclosure by the sexual
18 predator of his or her date of birth, social security number, or
19 personal identification number (PIN) as an Internet identifier

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20 waives the disclosure exemption in this paragraph for such
21 personal information an identifier that allows a person to
22 communicate in real time with another person using the Internet.

23 (4) SEXUAL PREDATOR CRITERIA.—

24 (a) For a current offense committed on or after October 1,
25 1993, upon conviction, an offender shall be designated as a
26 "sexual predator" under subsection (5), and subject to
27 registration under subsection (6) and community and public
28 notification under subsection (7) if:

29 1. The felony is:

30 a. A capital, life, or first-degree felony violation, or
31 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
32 is a minor and the defendant is not the victim's parent or
33 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
34 violation of a similar law of another jurisdiction; or

35 b. Any felony violation, or any attempt thereof, of s.
36 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
37 787.025(2)(c), where the victim is a minor and the defendant is
38 not the victim's parent or guardian; s. 794.011, excluding s.
39 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 796.045; s.
40 800.04; s. 825.1025 ~~825.1025(2)(b)~~; s. 827.071; s. 847.0135(5);
41 s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of
42 a similar law of another jurisdiction, and the offender has
43 previously been convicted of or found to have committed, or has
44 pled nolo contendere or guilty to, regardless of adjudication,
45 any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
46 787.02, or s. 787.025(2)(c), where the victim is a minor and the
47 defendant is not the victim's parent or guardian; s. 794.011,

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48 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
49 796.045; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
50 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2);
51 or s. 985.701(1); or a violation of a similar law of another
52 jurisdiction;

53 2. The offender has not received a pardon for any felony
54 or similar law of another jurisdiction that is necessary for the
55 operation of this paragraph; and

56 3. A conviction of a felony or similar law of another
57 jurisdiction necessary to the operation of this paragraph has
58 not been set aside in any postconviction proceeding.

59 (6) REGISTRATION.—

60 (a) A sexual predator must register with the department
61 through the sheriff's office by providing the following
62 information to the department:

63 1. Name; social security number; age; race; sex; date of
64 birth; height; weight; tattoos or other identifying marks; hair
65 and eye color; photograph; address of legal residence and
66 address of any current temporary residence, within the state or
67 out of state, including a rural route address and a post office
68 box; if no permanent or temporary address, any transient
69 residence within the state; address, location or description,
70 and dates of any current or known future temporary residence
71 within the state or out of state; all ~~any~~ electronic mail
72 addresses ~~address~~ and all Internet identifiers ~~any instant~~
73 ~~message name~~ required to be provided pursuant to subparagraph
74 (g)4.; all home telephone numbers ~~number~~ and ~~any~~ cellular
75 telephone numbers ~~number~~; date and place of any employment; the

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76 make, model, color, registration number, and license tag number
77 of all vehicles owned; date and place of each conviction;
78 fingerprints; palm prints; and a brief description of the crime
79 or crimes committed by the offender. A post office box shall not
80 be provided in lieu of a physical residential address. The
81 sexual predator must also produce his or her passport, if he or
82 she has a passport, and, if he or she is an alien, must produce
83 or provide information about documents establishing his or her
84 immigration status. The sexual predator must also provide
85 information about any professional licenses he or she may have.

86 a. If the sexual predator's place of residence is a motor
87 vehicle, trailer, mobile home, or manufactured home, as defined
88 in chapter 320, the sexual predator shall also provide to the
89 department written notice of the vehicle identification number;
90 the license tag number; the registration number; and a
91 description, including color scheme, of the motor vehicle,
92 trailer, mobile home, or manufactured home. If a sexual
93 predator's place of residence is a vessel, live-aboard vessel,
94 or houseboat, as defined in chapter 327, the sexual predator
95 shall also provide to the department written notice of the hull
96 identification number; the manufacturer's serial number; the
97 name of the vessel, live-aboard vessel, or houseboat; the
98 registration number; and a description, including color scheme,
99 of the vessel, live-aboard vessel, or houseboat.

100 b. If the sexual predator is enrolled, employed,
101 volunteering, or carrying on a vocation at an institution of
102 higher education in this state, the sexual predator shall also
103 provide to the department the name, address, and county of each

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104 institution, including each campus attended, and the sexual
105 predator's enrollment, volunteer, or employment status. Each
106 change in enrollment or employment status shall be reported in
107 person at the sheriff's office, or the Department of Corrections
108 if the sexual predator is in the custody or control of or under
109 the supervision of the Department of Corrections, within 48
110 hours after any change in status. The sheriff or the Department
111 of Corrections shall promptly notify each institution of the
112 sexual predator's presence and any change in the sexual
113 predator's enrollment, volunteer, or employment status.

114 2. Any other information determined necessary by the
115 department, including criminal and corrections records;
116 nonprivileged personnel and treatment records; and evidentiary
117 genetic markers when available.

118 (b) If the sexual predator is in the custody or control
119 of, or under the supervision of, the Department of Corrections,
120 or is in the custody of a private correctional facility, the
121 sexual predator must register with the Department of
122 Corrections. A sexual predator who is under the supervision of
123 the Department of Corrections but who is not incarcerated must
124 register with the Department of Corrections within 3 business
125 days after the court finds the offender to be a sexual predator.
126 The Department of Corrections shall provide to the department
127 registration information and the location of, and local
128 telephone number for, any Department of Corrections office that
129 is responsible for supervising the sexual predator. In addition,
130 the Department of Corrections shall notify the department if the

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131 sexual predator escapes or absconds from custody or supervision
132 or if the sexual predator dies.

133 (c) If the sexual predator is in the custody of a local
134 jail, the custodian of the local jail shall register the sexual
135 predator within 3 business days after intake of the sexual
136 predator for any reason and upon release, and shall forward the
137 registration information to the department. The custodian of the
138 local jail shall also take a digitized photograph of the sexual
139 predator while the sexual predator remains in custody and shall
140 provide the digitized photograph to the department. The
141 custodian shall notify the department if the sexual predator
142 escapes from custody or dies.

143 (d) If the sexual predator is under federal supervision,
144 the federal agency responsible for supervising the sexual
145 predator may forward to the department any information regarding
146 the sexual predator which is consistent with the information
147 provided by the Department of Corrections under this section,
148 and may indicate whether use of the information is restricted to
149 law enforcement purposes only or may be used by the department
150 for purposes of public notification.

151 (e)1. If the sexual predator is not in the custody or
152 control of, or under the supervision of, the Department of
153 Corrections or is not in the custody of a private correctional
154 facility, the sexual predator shall register in person:

155 a. At the sheriff's office in the county where he or she
156 establishes or maintains a residence within 48 hours after
157 establishing or maintaining a residence in this state; and

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158 b. At the sheriff's office in the county where he or she
159 was designated a sexual predator by the court within 48 hours
160 after such finding is made.

161 2. Any change in the sexual predator's permanent or
162 temporary residence, name, or all any electronic mail addresses
163 ~~address~~ and all Internet identifiers ~~any instant message name~~
164 required to be provided pursuant to subparagraph (g)4., after
165 the sexual predator registers in person at the sheriff's office
166 as provided in subparagraph 1., shall be accomplished in the
167 manner provided in paragraphs (g), (i), and (j). When a sexual
168 predator registers with the sheriff's office, the sheriff shall
169 take a photograph, ~~and~~ a set of fingerprints, and palm prints of
170 the predator and forward the photographs, palm prints, and
171 fingerprints to the department, along with the information that
172 the predator is required to provide pursuant to this section.

173 (f) Within 48 hours after the registration required under
174 paragraph (a) or paragraph (e), a sexual predator who is not
175 incarcerated and who resides in the community, including a
176 sexual predator under the supervision of the Department of
177 Corrections, shall register in person at a driver ~~driver's~~
178 license office of the Department of Highway Safety and Motor
179 Vehicles and shall present proof of registration. At the driver
180 ~~driver's~~ license office the sexual predator shall:

181 1. If otherwise qualified, secure a Florida driver
182 ~~driver's~~ license, renew a Florida driver ~~driver's~~ license, or
183 secure an identification card. The sexual predator shall
184 identify himself or herself as a sexual predator who is required
185 to comply with this section, provide his or her place of

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186 permanent, temporary, or transient residence, including a rural
187 route address and a post office box, and submit to the taking of
188 a photograph for use in issuing a driver ~~driver's~~ license,
189 renewed license, or identification card, and for use by the
190 department in maintaining current records of sexual predators. A
191 post office box shall not be provided in lieu of a physical
192 residential address. If the sexual predator's place of residence
193 is a motor vehicle, trailer, mobile home, or manufactured home,
194 as defined in chapter 320, the sexual predator shall also
195 provide to the Department of Highway Safety and Motor Vehicles
196 the vehicle identification number; the license tag number; the
197 registration number; and a description, including color scheme,
198 of the motor vehicle, trailer, mobile home, or manufactured
199 home. If a sexual predator's place of residence is a vessel,
200 live-aboard vessel, or houseboat, as defined in chapter 327, the
201 sexual predator shall also provide to the Department of Highway
202 Safety and Motor Vehicles the hull identification number; the
203 manufacturer's serial number; the name of the vessel, live-
204 aboard vessel, or houseboat; the registration number; and a
205 description, including color scheme, of the vessel, live-aboard
206 vessel, or houseboat.

207 2. Pay the costs assessed by the Department of Highway
208 Safety and Motor Vehicles for issuing or renewing a driver
209 ~~driver's~~ license or identification card as required by this
210 section. The driver ~~driver's~~ license or identification card
211 issued to the sexual predator must be in compliance with s.
212 322.141(3).

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213 3. Provide, upon request, any additional information
214 necessary to confirm the identity of the sexual predator,
215 including a set of fingerprints.

216 (g)1. Each time a sexual predator's driver ~~driver's~~
217 license or identification card is subject to renewal, and,
218 without regard to the status of the predator's driver ~~driver's~~
219 license or identification card, within 48 hours after any change
220 of the predator's residence or change in the predator's name by
221 reason of marriage or other legal process, the predator shall
222 report in person to a driver ~~driver's~~ license office and shall
223 be subject to the requirements specified in paragraph (f). The
224 Department of Highway Safety and Motor Vehicles shall forward to
225 the department and to the Department of Corrections all
226 photographs and information provided by sexual predators.
227 Notwithstanding the restrictions set forth in s. 322.142, the
228 Department of Highway Safety and Motor Vehicles is authorized to
229 release a reproduction of a color-photograph or digital-image
230 license to the Department of Law Enforcement for purposes of
231 public notification of sexual predators as provided in this
232 section. A sexual predator who is unable to secure or update a
233 driver license or identification card with the Department of
234 Highway Safety and Motor Vehicles as provided in paragraph (f)
235 and this paragraph must also report any change of the predator's
236 residence or change in the predator's name by reason of marriage
237 or other legal process within 48 hours after the change to the
238 sheriff's office in the county where the predator resides or is
239 located and provide confirmation that he or she reported such

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240 | information to the Department of Highway Safety and Motor
241 | Vehicles.

242 | 2. A sexual predator who vacates a permanent, temporary,
243 | or transient residence and fails to establish or maintain
244 | another permanent, temporary, or transient residence shall,
245 | within 48 hours after vacating the permanent, temporary, or
246 | transient residence, report in person to the sheriff's office of
247 | the county in which he or she is located. The sexual predator
248 | shall specify the date upon which he or she intends to or did
249 | vacate such residence. The sexual predator must provide or
250 | update all of the registration information required under
251 | paragraph (a). The sexual predator must provide an address for
252 | the residence or other place that he or she is or will be
253 | located during the time in which he or she fails to establish or
254 | maintain a permanent or temporary residence.

255 | 3. A sexual predator who remains at a permanent,
256 | temporary, or transient residence after reporting his or her
257 | intent to vacate such residence shall, within 48 hours after the
258 | date upon which the predator indicated he or she would or did
259 | vacate such residence, report in person to the sheriff's office
260 | to which he or she reported pursuant to subparagraph 2. for the
261 | purpose of reporting his or her address at such residence. When
262 | the sheriff receives the report, the sheriff shall promptly
263 | convey the information to the department. An offender who makes
264 | a report as required under subparagraph 2. but fails to make a
265 | report as required under this subparagraph commits a felony of
266 | the second degree, punishable as provided in s. 775.082, s.
267 | 775.083, or s. 775.084.

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268 4. A sexual predator must register all ~~any~~ electronic mail
269 addresses and Internet identifiers ~~address or instant message~~
270 ~~name~~ with the department prior to using such electronic mail
271 addresses and Internet identifiers ~~address or instant message~~
272 ~~name on or after October 1, 2007~~. The department shall establish
273 an online system through which sexual predators may securely
274 access and update all electronic mail address and Internet
275 identifier ~~instant message name~~ information.

276 (h) The department must notify the sheriff and the state
277 attorney of the county and, if applicable, the police chief of
278 the municipality, where the sexual predator maintains a
279 residence.

280 (i) A sexual predator who intends to establish a
281 permanent, temporary, or transient residence in another state or
282 jurisdiction other than the State of Florida shall report in
283 person to the sheriff of the county of current residence within
284 48 hours before the date he or she intends to leave this state
285 to establish residence in another state or jurisdiction or
286 within 21 days before his or her planned departure date if the
287 intended residence of 5 days or more is outside of the United
288 States. The sexual predator must provide to the sheriff the
289 address, municipality, county, ~~and~~ state, and country of
290 intended residence. The sheriff shall promptly provide to the
291 department the information received from the sexual predator.
292 The department shall notify the statewide law enforcement
293 agency, or a comparable agency, in the intended state, ~~or~~
294 jurisdiction, or country of residence of the sexual predator's
295 intended residence. The failure of a sexual predator to provide

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296 his or her intended place of residence is punishable as provided
297 in subsection (10).

298 (j) A sexual predator who indicates his or her intent to
299 establish a permanent, temporary, or transient residence in
300 another state, a ~~or~~ jurisdiction other than the State of
301 Florida, or another country and later decides to remain in this
302 state shall, within 48 hours after the date upon which the
303 sexual predator indicated he or she would leave this state,
304 report in person to the sheriff to which the sexual predator
305 reported the intended change of residence, and report his or her
306 intent to remain in this state. If the sheriff is notified by
307 the sexual predator that he or she intends to remain in this
308 state, the sheriff shall promptly report this information to the
309 department. A sexual predator who reports his or her intent to
310 establish a permanent, temporary, or transient residence in
311 another state, a ~~or~~ jurisdiction other than the State of
312 Florida, or another country, but who remains in this state
313 without reporting to the sheriff in the manner required by this
314 paragraph, commits a felony of the second degree, punishable as
315 provided in s. 775.082, s. 775.083, or s. 775.084.

316 (k)1. The department is responsible for the online
317 maintenance of current information regarding each registered
318 sexual predator. The department must maintain hotline access for
319 state, local, and federal law enforcement agencies to obtain
320 instantaneous locator file and offender characteristics
321 information on all released registered sexual predators for
322 purposes of monitoring, tracking, and prosecution. The

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323 | photograph and fingerprints do not have to be stored in a
324 | computerized format.

325 | 2. The department's sexual predator registration list,
326 | containing the information described in subparagraph (a)1., is a
327 | public record. The department is authorized to disseminate this
328 | public information by any means deemed appropriate, including
329 | operating a toll-free telephone number for this purpose. When
330 | the department provides information regarding a registered
331 | sexual predator to the public, department personnel must advise
332 | the person making the inquiry that positive identification of a
333 | person believed to be a sexual predator cannot be established
334 | unless a fingerprint comparison is made, and that it is illegal
335 | to use public information regarding a registered sexual predator
336 | to facilitate the commission of a crime.

337 | 3. The department shall adopt guidelines as necessary
338 | regarding the registration of sexual predators and the
339 | dissemination of information regarding sexual predators as
340 | required by this section.

341 | (1) A sexual predator must maintain registration with the
342 | department for the duration of his or her life, unless the
343 | sexual predator has received a full pardon or has had a
344 | conviction set aside in a postconviction proceeding for any
345 | offense that met the criteria for the sexual predator
346 | designation.

347 | (8) VERIFICATION.—The department and the Department of
348 | Corrections shall implement a system for verifying the addresses
349 | of sexual predators. The system must be consistent with the
350 | provisions of the federal Adam Walsh Child Protection and Safety

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351 Act of 2006 and any other federal standards applicable to such
352 verification or required to be met as a condition for the
353 receipt of federal funds by the state. The Department of
354 Corrections shall verify the addresses of sexual predators who
355 are not incarcerated but who reside in the community under the
356 supervision of the Department of Corrections and shall report to
357 the department any failure by a sexual predator to comply with
358 registration requirements. County and local law enforcement
359 agencies, in conjunction with the department, shall verify the
360 addresses of sexual predators who are not under the care,
361 custody, control, or supervision of the Department of
362 Corrections. Local law enforcement agencies shall report to the
363 department any failure by a sexual predator to comply with
364 registration requirements.

365 (a) A sexual predator must report in person each year
366 during the month of the sexual predator's birthday and during
367 every third month thereafter to the sheriff's office in the
368 county in which he or she resides or is otherwise located to
369 reregister. The sheriff's office may determine the appropriate
370 times and days for reporting by the sexual predator, which shall
371 be consistent with the reporting requirements of this paragraph.
372 Reregistration shall include any changes to the following
373 information:

374 1. Name; social security number; age; race; sex; date of
375 birth; height; weight; tattoos or other identifying marks; hair
376 and eye color; address of any permanent residence and address of
377 any current temporary residence, within the state or out of
378 state, including a rural route address and a post office box; if

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379 no permanent or temporary address, any transient residence
380 within the state; address, location or description, and dates of
381 any current or known future temporary residence within the state
382 or out of state; all any electronic mail addresses ~~address~~ and
383 all Internet identifiers ~~any instant message name~~ required to be
384 provided pursuant to subparagraph (6)(g)4.; all home telephone
385 numbers ~~number~~ and any cellular telephone numbers ~~number~~; date
386 and place of any employment; the vehicle make, model, color,
387 registration number, and license tag number of all vehicles
388 owned; fingerprints; palm prints; and photograph. A post office
389 box shall not be provided in lieu of a physical residential
390 address. The sexual predator must also produce his or her
391 passport, if he or she has a passport, and, if he or she is an
392 alien, must produce or provide information about documents
393 establishing his or her immigration status. The sexual predator
394 must also provide information about any professional licenses he
395 or she may have.

396 2. If the sexual predator is enrolled, employed,
397 volunteering, or carrying on a vocation at an institution of
398 higher education in this state, the sexual predator shall also
399 provide to the department the name, address, and county of each
400 institution, including each campus attended, and the sexual
401 predator's enrollment, volunteer, or employment status.

402 3. If the sexual predator's place of residence is a motor
403 vehicle, trailer, mobile home, or manufactured home, as defined
404 in chapter 320, the sexual predator shall also provide the
405 vehicle identification number; the license tag number; the
406 registration number; and a description, including color scheme,

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407 of the motor vehicle, trailer, mobile home, or manufactured
408 home. If the sexual predator's place of residence is a vessel,
409 live-aboard vessel, or houseboat, as defined in chapter 327, the
410 sexual predator shall also provide the hull identification
411 number; the manufacturer's serial number; the name of the
412 vessel, live-aboard vessel, or houseboat; the registration
413 number; and a description, including color scheme, of the
414 vessel, live-aboard vessel, or houseboat.

415 (b) The sheriff's office shall, within 2 working days,
416 electronically submit and update all information provided by the
417 sexual predator to the department in a manner prescribed by the
418 department.

419 (10) PENALTIES.-

420 (a) Except as otherwise specifically provided, a sexual
421 predator who fails to register; who fails, after registration,
422 to maintain, acquire, or renew a driver ~~driver's~~ license or
423 identification card; who fails to provide required location
424 information, electronic mail address information, Internet
425 identifier ~~instant message name~~ information, all home telephone
426 numbers ~~number~~ and any cellular telephone numbers ~~number~~, or
427 change-of-name information; who fails to make a required report
428 in connection with vacating a permanent residence; who fails to
429 reregister as required; who fails to respond to any address
430 verification correspondence from the department within 3 weeks
431 of the date of the correspondence; who knowingly provides false
432 registration information by act or omission; or who otherwise
433 fails, by act or omission, to comply with the requirements of

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434 | this section~~r~~ commits a felony of the third degree, punishable
435 | as provided in s. 775.082, s. 775.083, or s. 775.084.

436 | Section 2. Section 800.03, Florida Statutes, is amended to
437 | read:

438 | 800.03 Exposure of sexual organs.—

439 | (1) It is unlawful to expose or exhibit one's sexual
440 | organs in public or on the private premises of another, or so
441 | near thereto as to be seen from such private premises, in a
442 | vulgar or indecent manner, or to be naked in public except in
443 | any place provided or set apart for that purpose.

444 | (2)(a) Except as provided in paragraph (b), a violation of
445 | this section is a misdemeanor of the first degree, punishable as
446 | provided in s. 775.082 or s. 775.083.

447 | (b) A third or subsequent violation of this section is a
448 | felony of the third degree, punishable as provided in s.
449 | 775.082, s. 775.083, or s. 775.084.

450 | (3) A mother's breastfeeding of her baby does not under
451 | any circumstance violate this section.

452 | Section 3. Paragraph (m) is added to subsection (2) of
453 | section 903.046, Florida Statutes, to read:

454 | 903.046 Purpose of and criteria for bail determination.—

455 | (2) When determining whether to release a defendant on
456 | bail or other conditions, and what that bail or those conditions
457 | may be, the court shall consider:

458 | (m) Whether the defendant, other than a defendant whose
459 | only criminal charge is a misdemeanor offense under chapter 316,
460 | is required to register as a sexual offender under s. 943.0435
461 | or a sexual predator under s. 775.21; and, if so, he or she is

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462 not eligible for release on bail or surety bond until the first
463 appearance on the case in order to ensure the full participation
464 of the prosecutor and the protection of the public.

465 Section 4. Paragraphs (a) and (g) of subsection (1),
466 subsection (2), paragraphs (a) and (d) of subsection (4),
467 subsections (7), (8), and (11), and paragraph (c) of subsection
468 (14) of section 943.0435, Florida Statutes, are amended to read:

469 943.0435 Sexual offenders required to register with the
470 department; penalty.—

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

472 (a)1. "Sexual offender" means a person who meets the
473 criteria in sub-subparagraph a., sub-subparagraph b., sub-
474 subparagraph c., or sub-subparagraph d., as follows:

475 a.(I) Has been convicted of committing, or attempting,
476 soliciting, or conspiring to commit, any of the criminal
477 offenses proscribed in the following statutes in this state or
478 similar offenses in another jurisdiction: s. 393.135(2); s.
479 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
480 the victim is a minor and the defendant is not the victim's
481 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
482 794.05; s. 796.03; s. 796.035; s. 796.045; s. 800.04; s.
483 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
484 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
485 916.1075(2); or s. 985.701(1); or any similar offense committed

486 in this state which has been redesignated from a former statute
487 number to one of those listed in this sub-sub-subparagraph; and

488 (II) Has been released on or after October 1, 1997, from
489 the sanction imposed for any conviction of an offense described

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490 in sub-sub-subparagraph (I). For purposes of sub-sub-
491 subparagraph (I), a sanction imposed in this state or in any
492 other jurisdiction includes, but is not limited to, a fine,
493 probation, community control, parole, conditional release,
494 control release, or incarceration in a state prison, federal
495 prison, private correctional facility, or local detention
496 facility;

497 b. Establishes or maintains a residence in this state and
498 who has not been designated as a sexual predator by a court of
499 this state but who has been designated as a sexual predator, as
500 a sexually violent predator, or by another sexual offender
501 designation in another state or jurisdiction and was, as a
502 result of such designation, subjected to registration or
503 community or public notification, or both, or would be if the
504 person were a resident of that state or jurisdiction, without
505 regard to whether the person otherwise meets the criteria for
506 registration as a sexual offender;

507 c. Establishes or maintains a residence in this state who
508 is in the custody or control of, or under the supervision of,
509 any other state or jurisdiction as a result of a conviction for
510 committing, or attempting, soliciting, or conspiring to commit,
511 any of the criminal offenses proscribed in the following
512 statutes or similar offense in another jurisdiction: s.
513 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
514 787.025(2)(c), where the victim is a minor and the defendant is
515 not the victim's parent or guardian; s. 794.011, excluding s.
516 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 796.045; s.
517 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,

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518 | excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
519 | s. 916.1075(2); or s. 985.701(1); or any similar offense
520 | committed in this state which has been redesignated from a
521 | former statute number to one of those listed in this sub-
522 | subparagraph; or

523 | d. On or after July 1, 2007, has been adjudicated
524 | delinquent for committing, or attempting, soliciting, or
525 | conspiring to commit, any of the criminal offenses proscribed in
526 | the following statutes in this state or similar offenses in
527 | another jurisdiction when the juvenile was 14 years of age or
528 | older at the time of the offense:

529 | (I) Section 794.011, excluding s. 794.011(10);

530 | (II) Section 800.04(4)(b) where the victim is under 12
531 | years of age or where the court finds sexual activity by the use
532 | of force or coercion;

533 | (III) Section 800.04(5)(c)1. where the court finds
534 | molestation involving unclothed genitals; or

535 | (IV) Section 800.04(5)(d) where the court finds the use of
536 | force or coercion and unclothed genitals.

537 | 2. For all qualifying offenses listed in sub-subparagraph
538 | (1)(a)1.d., the court shall make a written finding of the age of
539 | the offender at the time of the offense.

540 |

541 | For each violation of a qualifying offense listed in this
542 | subsection, except for a violation of s. 794.011, the court
543 | shall make a written finding of the age of the victim at the
544 | time of the offense. For a violation of s. 800.04(4), the court
545 | shall additionally make a written finding indicating that the

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546 offense did or did not involve sexual activity and indicating
547 that the offense did or did not involve force or coercion. For a
548 violation of s. 800.04(5), the court shall additionally make a
549 written finding that the offense did or did not involve
550 unclothed genitals or genital area and that the offense did or
551 did not involve the use of force or coercion.

552 (g) "Internet identifier ~~Instant message name~~" has the
553 same meaning as provided in s. 775.21 ~~means an identifier that~~
554 ~~allows a person to communicate in real time with another person~~
555 ~~using the Internet.~~

556 (2) A sexual offender shall:

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

558 1. In the county in which the offender establishes or
559 maintains a permanent, temporary, or transient residence within
560 48 hours after:

561 a. Establishing permanent, temporary, or transient
562 residence in this state; or

563 b. Being released from the custody, control, or
564 supervision of the Department of Corrections or from the custody
565 of a private correctional facility; or

566 2. In the county where he or she was convicted within 48
567 hours after being convicted for a qualifying offense for
568 registration under this section if the offender is not in the
569 custody or control of, or under the supervision of, the
570 Department of Corrections, or is not in the custody of a private
571 correctional facility.

572

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573 Any change in the information required to be provided pursuant
574 to paragraph (b), including, but not limited to, any change in
575 the sexual offender's permanent, temporary, or transient
576 residence, name, all ~~any~~ electronic mail ~~addresses~~ ~~address~~ and
577 all Internet identifiers ~~any instant message name~~ required to be
578 provided pursuant to paragraph (4)(d), after the sexual offender
579 reports in person at the sheriff's office, shall be accomplished
580 in the manner provided in subsections (4), (7), and (8).

581 (b) Provide his or her name; date of birth; social
582 security number; race; sex; height; weight; hair and eye color;
583 tattoos or other identifying marks; occupation and place of
584 employment; address of permanent or legal residence or address
585 of any current temporary residence, within the state or out of
586 state, including a rural route address and a post office box; if
587 no permanent or temporary address, any transient residence
588 within the state, address, location or description, and dates of
589 any current or known future temporary residence within the state
590 or out of state; the make, model, color, registration number,
591 and license tag number of all vehicles owned; all home telephone
592 numbers ~~number~~ and any cellular telephone numbers ~~number~~; all
593 any electronic mail ~~addresses~~ ~~address~~ and all Internet
594 identifiers ~~any instant message name~~ required to be provided
595 pursuant to paragraph (4)(d); fingerprints; palm prints;
596 photograph; date and place of each conviction; and a brief
597 description of the crime or crimes committed by the offender. A
598 post office box shall not be provided in lieu of a physical
599 residential address. The sexual offender must also produce his
600 or her passport, if he or she has a passport, and, if he or she

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601 is an alien, must produce or provide information about documents
602 establishing his or her immigration status. The sexual offender
603 must also provide information about any professional licenses he
604 or she may have.

605 1. If the sexual offender's place of residence is a motor
606 vehicle, trailer, mobile home, or manufactured home, as defined
607 in chapter 320, the sexual offender shall also provide to the
608 department through the sheriff's office written notice of the
609 vehicle identification number; the license tag number; the
610 registration number; and a description, including color scheme,
611 of the motor vehicle, trailer, mobile home, or manufactured
612 home. If the sexual offender's place of residence is a vessel,
613 live-aboard vessel, or houseboat, as defined in chapter 327, the
614 sexual offender shall also provide to the department written
615 notice of the hull identification number; the manufacturer's
616 serial number; the name of the vessel, live-aboard vessel, or
617 houseboat; the registration number; and a description, including
618 color scheme, of the vessel, live-aboard vessel, or houseboat.

619 2. If the sexual offender is enrolled, employed,
620 volunteering, or carrying on a vocation at an institution of
621 higher education in this state, the sexual offender shall also
622 provide to the department through the sheriff's office the name,
623 address, and county of each institution, including each campus
624 attended, and the sexual offender's enrollment or employment
625 status. Each change in enrollment, volunteer, or employment
626 status shall be reported in person at the sheriff's office,
627 within 48 hours after any change in status. The sheriff shall
628 promptly notify each institution of the sexual offender's

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629 presence and any change in the sexual offender's enrollment,
630 volunteer, or employment status.

631 (c) Provide any other information determined necessary by
632 the department, including criminal and corrections records;
633 nonprivileged personnel and treatment records; and evidentiary
634 genetic markers, when available.

635

636 When a sexual offender reports at the sheriff's office, the
637 sheriff shall take a photograph, ~~and~~ a set of fingerprints, and
638 palm prints of the offender and forward the photographs, palm
639 prints, and fingerprints to the department, along with the
640 information provided by the sexual offender. The sheriff shall
641 promptly provide to the department the information received from
642 the sexual offender.

643 (4)(a) Each time a sexual offender's driver ~~driver's~~
644 license or identification card is subject to renewal, and,
645 without regard to the status of the offender's driver ~~driver's~~
646 license or identification card, within 48 hours after any change
647 in the offender's permanent, temporary, or transient residence
648 or change in the offender's name by reason of marriage or other
649 legal process, the offender shall report in person to a driver
650 ~~driver's~~ license office, and shall be subject to the
651 requirements specified in subsection (3). The Department of
652 Highway Safety and Motor Vehicles shall forward to the
653 department all photographs and information provided by sexual
654 offenders. Notwithstanding the restrictions set forth in s.
655 322.142, the Department of Highway Safety and Motor Vehicles is
656 authorized to release a reproduction of a color-photograph or

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657 digital-image license to the Department of Law Enforcement for
658 purposes of public notification of sexual offenders as provided
659 in this section and ss. 943.043 and 944.606. A sexual offender
660 who is unable to secure or update a driver license or
661 identification card with the Department of Highway Safety and
662 Motor Vehicles as provided in subsection (3) and this subsection
663 must also report any change in the sexual offender's permanent,
664 temporary, or transient residence or change in the offender's
665 name by reason of marriage or other legal process within 48
666 hours after the change to the sheriff's office in the county
667 where the offender resides or is located and provide
668 confirmation that he or she reported such information to the
669 Department of Highway Safety and Motor Vehicles.

670 (d) A sexual offender must register all ~~any~~ electronic
671 mail addresses and Internet identifiers ~~address or instant~~
672 ~~message name~~ with the department prior to using such electronic
673 mail addresses and Internet identifiers ~~address or instant~~
674 ~~message name on or after October 1, 2007~~. The department shall
675 establish an online system through which sexual offenders may
676 securely access and update all electronic mail address and
677 Internet identifier ~~instant message name~~ information.

678 (7) A sexual offender who intends to establish a
679 permanent, temporary, or transient residence in another state or
680 jurisdiction other than the State of Florida shall report in
681 person to the sheriff of the county of current residence within
682 48 hours before the date he or she intends to leave this state
683 to establish residence in another state or jurisdiction or
684 within 21 days before his or her planned departure date if the

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685 intended residence of 5 days or more is outside of the United
686 States. The notification must include the address, municipality,
687 county, ~~and~~ state, and country of intended residence. The
688 sheriff shall promptly provide to the department the information
689 received from the sexual offender. The department shall notify
690 the statewide law enforcement agency, or a comparable agency, in
691 the intended state, ~~or~~ jurisdiction, or country of residence of
692 the sexual offender's intended residence. The failure of a
693 sexual offender to provide his or her intended place of
694 residence is punishable as provided in subsection (9).

695 (8) A sexual offender who indicates his or her intent to
696 establish a permanent, temporary, or transient residence in
697 another state, a ~~or~~ jurisdiction other than the State of
698 Florida, or another country and later decides to remain in this
699 state shall, within 48 hours after the date upon which the
700 sexual offender indicated he or she would leave this state,
701 report in person to the sheriff to which the sexual offender
702 reported the intended change of permanent, temporary, or
703 transient residence, and report his or her intent to remain in
704 this state. The sheriff shall promptly report this information
705 to the department. A sexual offender who reports his or her
706 intent to establish a permanent, temporary, or transient
707 residence in another state, a ~~or~~ jurisdiction other than the
708 State of Florida, or another country but who remains in this
709 state without reporting to the sheriff in the manner required by
710 this subsection commits a felony of the second degree,
711 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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712 (11) Except as provided in this subsection and s.
713 943.04354, a sexual offender must maintain registration with the
714 department for the duration of his or her life, unless the
715 sexual offender has received a full pardon or has had a
716 conviction set aside in a postconviction proceeding for any
717 offense that meets the criteria for classifying the person as a
718 sexual offender for purposes of registration. ~~However, a sexual~~
719 ~~offender:~~

720 (a)1. A sexual offender may petition the criminal division
721 of the circuit court of the circuit in which the sexual offender
722 resides for the purpose of removing the requirement for
723 registration as a sexual offender if ~~who has been lawfully~~
724 ~~released from confinement, supervision, or sanction, whichever~~
725 ~~is later, for at least 25 years and has not been arrested for~~
726 ~~any felony or misdemeanor offense since release, provided that~~
727 ~~the sexual offender's requirement to register was not based upon~~
728 ~~an adult conviction:~~

729 a. Twenty-five years have elapsed since the sexual
730 offender's registration period for the most recent conviction
731 that required the offender to register began;

732 b. The sexual offender has not been convicted or
733 adjudicated delinquent of any felony offense or of an offense
734 punishable by more than 1 year of imprisonment during the 25
735 years preceding the petition to the court;

736 c. The sexual offender has successfully completed all
737 sanctions imposed for all offenses that required the offender to
738 register;

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739 d. The sexual offender's requirement to register was not
740 based upon an adult conviction for a violation of s. 787.01, s.
741 794.011, excluding s. 794.011(10), s. 800.04(4)(b) where the
742 court finds the offense involved a victim under 12 years of age
743 or sexual activity by the use of force or coercion, s.
744 800.04(5)(b), or s. 800.04(5)(c)2. where the court finds the
745 offense involved unclothed genitals or genital area; for any
746 attempt or conspiracy to commit any offense listed in this sub-
747 subparagraph; or for a violation of similar law of another
748 jurisdiction; and

749 e. For sexual offenders whose requirement to register is
750 based upon a conviction in another state, the sexual offender is
751 not required to register as a sexual offender pursuant to the
752 laws of the state where the conviction occurred.

753 ~~a. For a violation of s. 787.01 or s. 787.02;~~

754 ~~b. For a violation of s. 794.011, excluding s.~~
755 ~~794.011(10);~~

756 ~~c. For a violation of s. 800.04(4)(b) where the court~~
757 ~~finds the offense involved a victim under 12 years of age or~~
758 ~~sexual activity by the use of force or coercion;~~

759 ~~d. For a violation of s. 800.04(5)(b);~~

760 ~~e. For a violation of s. 800.04(5)c.2. where the court~~
761 ~~finds the offense involved unclothed genitals or genital area;~~

762 ~~f. For any attempt or conspiracy to commit any such~~
763 ~~offense; or~~

764 ~~g. For a violation of similar law of another jurisdiction,~~
765

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766 ~~may petition the criminal division of the circuit court of the~~
767 ~~circuit in which the sexual offender resides for the purpose of~~
768 ~~removing the requirement for registration as a sexual offender.~~

769 2. A sexual offender whose requirement to register was
770 based upon an adult conviction for a violation of s. 787.02 or
771 s. 827.071(5), for any attempt or conspiracy to commit any
772 offense listed in this subparagraph, or for a violation of
773 similar law of another jurisdiction may petition the criminal
774 division of the circuit court of the circuit in which the sexual
775 offender resides for the purpose of removing the requirement for
776 registration as a sexual offender if:

777 a. Fifteen years have elapsed since the sexual offender's
778 registration period for the most recent conviction that required
779 the offender to register began;

780 b. The sexual offender has not been convicted or
781 adjudicated delinquent of any felony offense or of an offense
782 punishable by more than 1 year of imprisonment during the 10
783 years preceding the petition to the court;

784 c. The sexual offender has successfully completed all
785 sanctions imposed for all offenses that required the offender to
786 register; and

787 d. For sexual offenders whose requirement to register is
788 based upon a conviction in another state, the sexual offender is
789 not required to register as a sexual offender pursuant to the
790 laws of the state where the conviction occurred.

791 3. A sexual offender required to register under sub-
792 subparagraph (1)(a)1.d. may petition the criminal division of
793 the circuit court of the circuit in which the sexual offender

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794 resides for the purpose of removing the requirement for
795 registration as a sexual offender if:

796 a. Twenty-five years have elapsed since the sexual
797 offender's registration period for the most recent adjudication
798 that required the offender to register began;

799 b. The sexual offender has not been convicted or
800 adjudicated delinquent of any felony offense or of an offense
801 punishable by more than 1 year of imprisonment during the 25
802 years preceding the petition to the court; and

803 c. The sexual offender has successfully completed all
804 sanctions imposed for any offense that required the offender to
805 register.

806 4.2. The court may grant or deny relief if the offender
807 demonstrates to the court that ~~he or she has not been arrested~~
808 ~~for any crime since release;~~ the requested relief complies with
809 this paragraph, ~~the provisions of~~ the federal Adam Walsh Child
810 Protection and Safety Act of 2006, and any other federal
811 standards applicable to the removal of registration requirements
812 for a sexual offender or required to be met as a condition for
813 the receipt of federal funds by the state; and the court is
814 otherwise satisfied that the offender is not a current or
815 potential threat to public safety. The state attorney in the
816 circuit in which the petition is filed and the department must
817 be given notice of the petition at least 3 weeks before the
818 hearing on the matter. The state attorney may present evidence
819 in opposition to the requested relief or may otherwise
820 demonstrate the reasons why the petition should be denied. If
821 the court grants the petition, the court shall instruct the

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822 petitioner to provide the department with a certified copy of
823 the order granting relief. If the court denies the petition, the
824 court may set a future date at which the sexual offender may
825 again petition the court for relief, subject to the standards
826 for relief provided in this subsection.

827 ~~5.3.~~ The department shall remove an offender from
828 classification as a sexual offender for purposes of registration
829 if the offender provides to the department a certified copy of
830 the court's written findings or order that indicates that the
831 offender is no longer required to comply with the requirements
832 for registration as a sexual offender.

833 6. For purposes of this paragraph:

834 a. The registration period of a sexual offender sentenced
835 to a term of incarceration or committed to a residential program
836 begins upon the offender's release for the most recent
837 conviction that required the offender to register.

838 b. A sexual offender's registration period is tolled
839 during any period in which the offender is incarcerated, civilly
840 committed, detained pursuant to chapter 985, or committed to a
841 residential program.

842 (b) A sexual offender as defined in sub-subparagraph
843 (1)(a)1.b. must maintain registration with the department for
844 the duration of his or her life until the person provides the
845 department with an order issued by the court that designated the
846 person as a sexual predator, as a sexually violent predator, or
847 by another sexual offender designation in the state or
848 jurisdiction in which the order was issued which states that
849 such designation has been removed or demonstrates to the

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850 department that such designation, if not imposed by a court, has
851 been removed by operation of law or court order in the state or
852 jurisdiction in which the designation was made, and provided
853 such person no longer meets the criteria for registration as a
854 sexual offender under the laws of this state.

855 (14)

856 (c) The sheriff's office may determine the appropriate
857 times and days for reporting by the sexual offender, which shall
858 be consistent with the reporting requirements of this
859 subsection. Reregistration shall include any changes to the
860 following information:

861 1. Name; social security number; age; race; sex; date of
862 birth; height; weight; hair and eye color; address of any
863 permanent residence and address of any current temporary
864 residence, within the state or out of state, including a rural
865 route address and a post office box; if no permanent or
866 temporary address, any transient residence within the state;
867 address, location or description, and dates of any current or
868 known future temporary residence within the state or out of
869 state; all any electronic mail addresses ~~address~~ and all
870 Internet identifiers ~~any instant message name~~ required to be
871 provided pursuant to paragraph (4)(d); all home telephone
872 numbers ~~number~~ and any cellular telephone numbers ~~number~~; date
873 and place of any employment; the ~~vehicle~~ make, model, color,
874 registration number, and license tag number of all vehicles
875 owned; fingerprints; palm prints; and photograph. A post office
876 box may ~~shall~~ not be provided in lieu of a physical residential
877 address. The sexual offender must also produce his or her

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878 passport, if he or she has a passport, and, if he or she is an
879 alien, must produce or provide information about documents
880 establishing his or her immigration status. The sexual offender
881 must also provide information about any professional licenses he
882 or she may have.

883 2. If the sexual offender is enrolled, volunteering,
884 employed, or carrying on a vocation at an institution of higher
885 education in this state, the sexual offender shall also provide
886 to the department the name, address, and county of each
887 institution, including each campus attended, and the sexual
888 offender's enrollment, volunteer, or employment status.

889 3. If the sexual offender's place of residence is a motor
890 vehicle, trailer, mobile home, or manufactured home, as defined
891 in chapter 320, the sexual offender shall also provide the
892 vehicle identification number; the license tag number; the
893 registration number; and a description, including color scheme,
894 of the motor vehicle, trailer, mobile home, or manufactured
895 home. If the sexual offender's place of residence is a vessel,
896 live-aboard vessel, or houseboat, as defined in chapter 327, the
897 sexual offender shall also provide the hull identification
898 number; the manufacturer's serial number; the name of the
899 vessel, live-aboard vessel, or houseboat; the registration
900 number; and a description, including color scheme, of the
901 vessel, live-aboard vessel or houseboat.

902 4. Any sexual offender who fails to report in person as
903 required at the sheriff's office, ~~or~~ who fails to respond to any
904 address verification correspondence from the department within 3
905 weeks of the date of the correspondence, ~~or~~ who fails to report

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906 all electronic mail addresses and all Internet identifiers or
907 ~~instant message names~~, or who knowingly provides false
908 registration information by act or omission commits a felony of
909 the third degree, punishable as provided in s. 775.082, s.
910 775.083, or s. 775.084.

911 Section 5. Section 943.04351, Florida Statutes, is amended
912 to read:

913 943.04351 Search of registration information regarding
914 sexual predators and sexual offenders required prior to
915 appointment or employment.—A state agency or governmental
916 subdivision, prior to making any decision to appoint or employ a
917 person to work, whether for compensation or as a volunteer, at
918 any park, playground, day care center, or other place where
919 children regularly congregate, must conduct a search of that
920 person's name or other identifying information against the
921 registration information regarding sexual predators and sexual
922 offenders maintained by the Department of Law Enforcement under
923 s. 943.043. The agency or governmental subdivision may conduct
924 the search using the Internet site maintained by the Department
925 of Law Enforcement. Also, a national search must be conducted
926 through the Dru Sjodin National Sex Offender Public Website
927 maintained by the United States Department of Justice. This
928 section does not apply to those positions or appointments within
929 a state agency or governmental subdivision for which a state and
930 national criminal history background check is conducted.

931 Section 6. Section 943.04354, Florida Statutes, is amended
932 to read:

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933 943.04354 Removal of the requirement to register as a
934 sexual offender or sexual predator in special circumstances.-

935 (1) For purposes of this section, a person shall be
936 considered for removal of the requirement to register as a
937 sexual offender or sexual predator only if the person:

938 (a) Was ~~or will be~~ convicted, regardless of adjudication,
939 or adjudicated delinquent of a violation of s. 794.011, s.
940 800.04, s. 827.071, or s. 847.0135(5), or a similar offense in
941 another jurisdiction, or the person committed a violation of s.
942 794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which
943 adjudication of guilt was or will be withheld, and the person
944 does not have any other conviction, regardless of adjudication,
945 or adjudication of delinquency, or withheld of adjudication of
946 guilt for a violation of s. 794.011, s. 800.04, s. 827.071, or
947 s. 847.0135(5), or a similar offense in another jurisdiction;

948 (b) 1. Was convicted, regardless of adjudication, or
949 adjudicated delinquent of an offense listed in paragraph (a) and
950 is required to register as a sexual offender or sexual predator
951 solely on the basis of this conviction or adjudication
952 violation; or and

953 2. Was convicted, regardless of adjudication, or
954 adjudicated delinquent of an offense in another jurisdiction
955 that is similar to an offense listed in paragraph (a) and no
956 longer meets the criteria for registration as a sexual offender
957 or sexual predator under the laws of the jurisdiction where the
958 similar offense occurred; and

959 (c) Is not more than 4 years older than the victim of this
960 violation who was 13 ~~14~~ years of age or older but less ~~not more~~

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961 than 18 ~~17~~ years of age at the time the person committed this
962 violation.

963 (2) If a person meets the criteria in subsection (1) ~~and~~
964 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
965 ~~847.0135(5) was committed on or after July 1, 2007,~~ the person
966 may move the sentencing court or, for persons convicted or
967 adjudicated delinquent of a qualifying offense in another
968 jurisdiction, the criminal circuit court of the circuit in which
969 the person resides that will sentence or dispose of this
970 ~~violation~~ to remove the requirement that the person register as
971 a sexual offender or sexual predator. The person must allege in
972 the motion that he or she meets the criteria in subsection (1)
973 and that removal of the registration requirement will not
974 conflict with federal law. Persons convicted or adjudicated
975 delinquent of an offense in another jurisdiction that is similar
976 to an offense listed in paragraph (1)(a) must provide the court
977 written confirmation that he or she is not required to register
978 in the state where the conviction or adjudication occurred. The
979 state attorney and the department must be given notice of the
980 motion at least 21 days before the date of sentencing, ~~or~~
981 disposition of the this violation, or hearing on the motion and
982 may present evidence in opposition to the requested relief or
983 may otherwise demonstrate why the motion should be denied. At
984 sentencing, ~~or~~ disposition of the this violation, or hearing on
985 the motion, the court shall rule on this motion and, if the
986 court determines the person meets the criteria in subsection (1)
987 and the removal of the registration requirement will not
988 conflict with federal law, it may grant the motion and order the

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989 removal of the registration requirement. The court shall
990 instruct the person to provide the department a certified copy
991 of the order granting relief. If the court denies the motion,
992 the person is not authorized under this section to petition for
993 removal of the registration requirement.

994 ~~(3)(a) This subsection applies to a person who:~~

995 ~~1. Is not a person described in subsection (2) because the~~
996 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
997 ~~committed on or after July 1, 2007;~~

998 ~~2. Is subject to registration as a sexual offender or~~
999 ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~
1000 ~~827.071; and~~

1001 ~~3. Meets the criteria in subsection (1).~~

1002 ~~(b) A person may petition the court in which the sentence~~
1003 ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~
1004 ~~827.071 occurred for removal of the requirement to register as a~~
1005 ~~sexual offender or sexual predator. The person must allege in~~
1006 ~~the petition that he or she meets the criteria in subsection (1)~~
1007 ~~and removal of the registration requirement will not conflict~~
1008 ~~with federal law. The state attorney must be given notice of the~~
1009 ~~petition at least 21 days before the hearing on the petition and~~
1010 ~~may present evidence in opposition to the requested relief or~~
1011 ~~may otherwise demonstrate why the petition should be denied. The~~
1012 ~~court shall rule on the petition and, if the court determines~~
1013 ~~the person meets the criteria in subsection (1) and removal of~~
1014 ~~the registration requirement will not conflict with federal law,~~
1015 ~~it may grant the petition and order the removal of the~~
1016 ~~registration requirement. If the court denies the petition, the~~

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1017 ~~person is not authorized under this section to file any further~~
1018 ~~petition for removal of the registration requirement.~~

1019 (3)~~(4)~~ If a person provides to the Department of Law
1020 Enforcement a certified copy of the court's order removing the
1021 requirement that the person register as a sexual offender or
1022 sexual predator for the violation of s. 794.011, s. 800.04, s.
1023 827.071, or s. 847.0135(5), or a similar offense in another
1024 jurisdiction, the registration requirement will not apply to the
1025 person and the department shall remove all information about the
1026 person from the public registry of sexual offenders and sexual
1027 predators maintained by the department. However, the removal of
1028 this information from the public registry does not mean that the
1029 public is denied access to information about the person's
1030 criminal history or record that is otherwise available as a
1031 public record.

1032 Section 7. Subsection (2) and paragraph (a) of subsection
1033 (3) of section 943.0437, Florida Statutes, are amended to read:

1034 943.0437 Commercial social networking websites.-

1035 (2) The department may provide information relating to
1036 electronic mail addresses and Internet identifiers ~~instant~~
1037 ~~message names~~ maintained as part of the sexual offender registry
1038 to commercial social networking websites or third parties
1039 designated by commercial social networking websites. The
1040 commercial social networking website may use this information
1041 for the purpose of comparing registered users and screening
1042 potential users of the commercial social networking website
1043 against the list of electronic mail addresses and Internet
1044 identifiers ~~instant message names~~ provided by the department.

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1045 (3) This section shall not be construed to impose any
1046 civil liability on a commercial social networking website for:

1047 (a) Any action voluntarily taken in good faith to remove
1048 or disable any profile of a registered user associated with an
1049 electronic mail address or Internet identifier ~~instant message~~
1050 ~~name~~ contained in the sexual offender registry.

1051 Section 8. Paragraphs (b) and (d) of subsection (1) and
1052 paragraph (a) of subsection (3) of section 944.606, Florida
1053 Statutes, are amended to read:

1054 944.606 Sexual offenders; notification upon release.—

1055 (1) As used in this section:

1056 (b) "Sexual offender" means a person who has been
1057 convicted of committing, or attempting, soliciting, or
1058 conspiring to commit, any of the criminal offenses proscribed in
1059 the following statutes in this state or similar offenses in
1060 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
1061 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
1062 the defendant is not the victim's parent or guardian; s.
1063 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
1064 796.045; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.
1065 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
1066 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
1067 similar offense committed in this state which has been
1068 redesignated from a former statute number to one of those listed
1069 in this subsection, when the department has received verified
1070 information regarding such conviction; an offender's
1071 computerized criminal history record is not, in and of itself,
1072 verified information.

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1073 (d) "Internet identifier ~~Instant message name~~" has the
1074 same meaning as provided in s. 775.21 ~~means an identifier that~~
1075 ~~allows a person to communicate in real time with another person~~
1076 ~~using the Internet.~~

1077 (3)(a) The department must provide information regarding
1078 any sexual offender who is being released after serving a period
1079 of incarceration for any offense, as follows:

1080 1. The department must provide: the sexual offender's
1081 name, any change in the offender's name by reason of marriage or
1082 other legal process, and any alias, if known; the correctional
1083 facility from which the sexual offender is released; the sexual
1084 offender's social security number, race, sex, date of birth,
1085 height, weight, and hair and eye color; address of any planned
1086 permanent residence or temporary residence, within the state or
1087 out of state, including a rural route address and a post office
1088 box; if no permanent or temporary address, any transient
1089 residence within the state; address, location or description,
1090 and dates of any known future temporary residence within the
1091 state or out of state; date and county of sentence and each
1092 crime for which the offender was sentenced; a copy of the
1093 offender's fingerprints, palm prints, and a digitized photograph
1094 taken within 60 days before release; the date of release of the
1095 sexual offender; all any electronic mail addresses ~~address~~ and
1096 all Internet identifiers ~~any instant message name~~ required to be
1097 provided pursuant to s. 943.0435(4)(d); all and home telephone
1098 numbers ~~number~~ and any cellular telephone numbers; information
1099 about any professional licenses the offender may have, if known;
1100 and passport information, if he or she has a passport, and, if

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1101 | he or she is an alien, information about documents establishing
1102 | his or her immigration status number. The department shall
1103 | notify the Department of Law Enforcement if the sexual offender
1104 | escapes, absconds, or dies. If the sexual offender is in the
1105 | custody of a private correctional facility, the facility shall
1106 | take the digitized photograph of the sexual offender within 60
1107 | days before the sexual offender's release and provide this
1108 | photograph to the Department of Corrections and also place it in
1109 | the sexual offender's file. If the sexual offender is in the
1110 | custody of a local jail, the custodian of the local jail shall
1111 | register the offender within 3 business days after intake of the
1112 | offender for any reason and upon release, and shall notify the
1113 | Department of Law Enforcement of the sexual offender's release
1114 | and provide to the Department of Law Enforcement the information
1115 | specified in this paragraph and any information specified in
1116 | subparagraph 2. that the Department of Law Enforcement requests.

1117 | 2. The department may provide any other information deemed
1118 | necessary, including criminal and corrections records,
1119 | nonprivileged personnel and treatment records, when available.

1120 | Section 9. Paragraphs (a) and (f) of subsection (1),
1121 | subsection (4), and paragraph (c) of subsection (13) of section
1122 | 944.607, Florida Statutes, are amended to read:

1123 | 944.607 Notification to Department of Law Enforcement of
1124 | information on sexual offenders.—

1125 | (1) As used in this section, the term:

1126 | (a) "Sexual offender" means a person who is in the custody
1127 | or control of, or under the supervision of, the department or is
1128 | in the custody of a private correctional facility:

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1129 1. On or after October 1, 1997, as a result of a
1130 conviction for committing, or attempting, soliciting, or
1131 conspiring to commit, any of the criminal offenses proscribed in
1132 the following statutes in this state or similar offenses in
1133 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
1134 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
1135 the defendant is not the victim's parent or guardian; s.
1136 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
1137 796.035; s. 796.045; s. 800.04; s. 825.1025; s. 827.071; s.
1138 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
1139 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
1140 similar offense committed in this state which has been
1141 redesignated from a former statute number to one of those listed
1142 in this paragraph; or

1143 2. Who establishes or maintains a residence in this state
1144 and who has not been designated as a sexual predator by a court
1145 of this state but who has been designated as a sexual predator,
1146 as a sexually violent predator, or by another sexual offender
1147 designation in another state or jurisdiction and was, as a
1148 result of such designation, subjected to registration or
1149 community or public notification, or both, or would be if the
1150 person were a resident of that state or jurisdiction, without
1151 regard as to whether the person otherwise meets the criteria for
1152 registration as a sexual offender.

1153 (f) "Internet identifier ~~Instant message name~~" has the
1154 same meaning as provided in s. 775.21 ~~means an identifier that~~
1155 ~~allows a person to communicate in real time with another person~~
1156 ~~using the Internet.~~

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1157 (4) A sexual offender, as described in this section, who
1158 is under the supervision of the Department of Corrections but is
1159 not incarcerated must register with the Department of
1160 Corrections within 3 business days after sentencing for a
1161 registrable offense and otherwise provide information as
1162 required by this subsection.

1163 (a) The sexual offender shall provide his or her name;
1164 date of birth; social security number; race; sex; height;
1165 weight; hair and eye color; tattoos or other identifying marks;
1166 all any electronic mail addresses address and all Internet
1167 identifiers any instant message name required to be provided
1168 pursuant to s. 943.0435(4)(d); the make, model, color,
1169 registration number, and license tag number of all vehicles
1170 owned; permanent or legal residence and address of temporary
1171 residence within the state or out of state while the sexual
1172 offender is under supervision in this state, including any rural
1173 route address or post office box; if no permanent or temporary
1174 address, any transient residence within the state; and address,
1175 location or description, and dates of any current or known
1176 future temporary residence within the state or out of state. The
1177 sexual offender must also produce his or her passport, if he or
1178 she has a passport, and, if he or she is an alien, must produce
1179 or provide information about documents establishing his or her
1180 immigration status. The sexual offender must also provide
1181 information about any professional licenses he or she may have.

1182 The Department of Corrections shall verify the address of each
1183 sexual offender in the manner described in ss. 775.21 and
1184 943.0435. The department shall report to the Department of Law

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1185 Enforcement any failure by a sexual predator or sexual offender
1186 to comply with registration requirements.

1187 (b) If the sexual offender is enrolled, employed,
1188 volunteering, or carrying on a vocation at an institution of
1189 higher education in this state, the sexual offender shall
1190 provide the name, address, and county of each institution,
1191 including each campus attended, and the sexual offender's
1192 enrollment, volunteer, or employment status. Each change in
1193 enrollment, volunteer, or employment status shall be reported to
1194 the department within 48 hours after the change in status. The
1195 Department of Corrections shall promptly notify each institution
1196 of the sexual offender's presence and any change in the sexual
1197 offender's enrollment, volunteer, or employment status.

1198 (13)

1199 (c) The sheriff's office may determine the appropriate
1200 times and days for reporting by the sexual offender, which shall
1201 be consistent with the reporting requirements of this
1202 subsection. Reregistration shall include any changes to the
1203 following information:

1204 1. Name; social security number; age; race; sex; date of
1205 birth; height; weight; hair and eye color; address of any
1206 permanent residence and address of any current temporary
1207 residence, within the state or out of state, including a rural
1208 route address and a post office box; if no permanent or
1209 temporary address, any transient residence; address, location or
1210 description, and dates of any current or known future temporary
1211 residence within the state or out of state; all ~~any~~ electronic
1212 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~

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1213 ~~message name~~ required to be provided pursuant to s.
1214 943.0435(4)(d); date and place of any employment; ~~the vehicle~~
1215 make, model, color, registration number, and license tag number
1216 of all vehicles owned; fingerprints; palm prints; and
1217 photograph. A post office box shall not be provided in lieu of a
1218 physical residential address. The sexual offender must also
1219 produce his or her passport, if he or she has a passport, and,
1220 if he or she is an alien, must produce or provide information
1221 about documents establishing his or her immigration status. The
1222 sexual offender must also provide information about any
1223 professional licenses he or she may have.

1224 2. If the sexual offender is enrolled, employed,
1225 volunteering, or carrying on a vocation at an institution of
1226 higher education in this state, the sexual offender shall also
1227 provide to the department the name, address, and county of each
1228 institution, including each campus attended, and the sexual
1229 offender's enrollment, volunteer, or employment status.

1230 3. If the sexual offender's place of residence is a motor
1231 vehicle, trailer, mobile home, or manufactured home, as defined
1232 in chapter 320, the sexual offender shall also provide the
1233 vehicle identification number; the license tag number; the
1234 registration number; and a description, including color scheme,
1235 of the motor vehicle, trailer, mobile home, or manufactured
1236 home. If the sexual offender's place of residence is a vessel,
1237 live-aboard vessel, or houseboat, as defined in chapter 327, the
1238 sexual offender shall also provide the hull identification
1239 number; the manufacturer's serial number; the name of the
1240 vessel, live-aboard vessel, or houseboat; the registration

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1241 number; and a description, including color scheme, of the
1242 vessel, live-aboard vessel or houseboat.

1243 4. Any sexual offender who fails to report in person as
1244 required at the sheriff's office, ~~or~~ who fails to respond to any
1245 address verification correspondence from the department within 3
1246 weeks of the date of the correspondence, ~~or~~ who fails to report
1247 all electronic mail addresses and all Internet identifiers ~~or~~
1248 instant message names, or who knowingly provides false
1249 registration information by act or omission commits a felony of
1250 the third degree, punishable as provided in s. 775.082, s.
1251 775.083, or s. 775.084.

1252 Section 10. Subsection (11) of section 947.005, Florida
1253 Statutes, is amended to read:

1254 947.005 Definitions.—As used in this chapter, unless the
1255 context clearly indicates otherwise:

1256 (11) "Risk assessment" means an assessment completed by a
1257 ~~an independent~~ qualified practitioner to evaluate the level of
1258 risk associated when a sex offender has contact with a child.

1259 Section 11. Section 948.31, Florida Statutes, is amended
1260 to read:

1261 948.31 Evaluation and treatment of sexual predators and
1262 offenders on probation or community control.—The court may ~~shall~~
1263 ~~require an evaluation by a qualified practitioner to determine~~
1264 ~~the need of a probationer or community controllee for treatment.~~
1265 ~~If the court determines that a need therefor is established by~~
1266 ~~the evaluation process, the court shall require sexual offender~~
1267 ~~treatment as a term or condition of probation or community~~
1268 ~~control for any probationer or community controllee person who~~

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1269 is required to register as a sexual predator under s. 775.21 or
1270 sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to
1271 undergo an evaluation, at the probationer or community
1272 controllee's expense, by a qualified practitioner to determine
1273 whether such person needs sexual offender treatment. If the
1274 qualified practitioner determines that sexual offender treatment
1275 is needed and recommends treatment, the probationer or community
1276 controllee must successfully complete and pay for the treatment.
1277 Such treatment must ~~shall be required to~~ be obtained from a
1278 qualified practitioner as defined in s. 948.001. Treatment may
1279 not be administered by a qualified practitioner who has been
1280 convicted or adjudicated delinquent of committing, or
1281 attempting, soliciting, or conspiring to commit, any offense
1282 that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~
1283 ~~impose a restriction against contact with minors if sexual~~
1284 ~~offender treatment is recommended. The evaluation and~~
1285 ~~recommendations for treatment of the probationer or community~~
1286 ~~controllee shall be provided to the court for review.~~

1287 Section 12. Paragraph (a) of subsection (3) of section
1288 985.481, Florida Statutes, is amended to read:

1289 985.481 Sexual offenders adjudicated delinquent;
1290 notification upon release.-

1291 (3) (a) The department must provide information regarding
1292 any sexual offender who is being released after serving a period
1293 of residential commitment under the department for any offense,
1294 as follows:

1295 1. The department must provide the sexual offender's name,
1296 any change in the offender's name by reason of marriage or other

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1297 legal process, and any alias, if known; the correctional
1298 facility from which the sexual offender is released; the sexual
1299 offender's social security number, race, sex, date of birth,
1300 height, weight, and hair and eye color; the make, model, color,
1301 registration number, and license tag number of all vehicles
1302 owned, if known; address of any planned permanent residence or
1303 temporary residence, within the state or out of state, including
1304 a rural route address and a post office box; if no permanent or
1305 temporary address, any transient residence within the state;
1306 address, location or description, and dates of any known future
1307 temporary residence within the state or out of state; date and
1308 county of disposition and each crime for which there was a
1309 disposition; a copy of the offender's fingerprints and a
1310 digitized photograph taken within 60 days before release; the
1311 date of release of the sexual offender; all ~~and~~ home telephone
1312 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
1313 about any professional licenses the offender may have, if known;
1314 and passport information, if he or she has a passport, and, if
1315 he or she is an alien, information about documents establishing
1316 his or her immigration status ~~number~~. The department shall
1317 notify the Department of Law Enforcement if the sexual offender
1318 escapes, absconds, or dies. If the sexual offender is in the
1319 custody of a private correctional facility, the facility shall
1320 take the digitized photograph of the sexual offender within 60
1321 days before the sexual offender's release and also place it in
1322 the sexual offender's file. If the sexual offender is in the
1323 custody of a local jail, the custodian of the local jail shall
1324 register the offender within 3 business days after intake of the

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1325 offender for any reason and upon release, and shall notify the
1326 Department of Law Enforcement of the sexual offender's release
1327 and provide to the Department of Law Enforcement the information
1328 specified in this subparagraph and any information specified in
1329 subparagraph 2. which the Department of Law Enforcement
1330 requests.

1331 2. The department may provide any other information
1332 considered necessary, including criminal and delinquency
1333 records, when available.

1334 Section 13. Subsection (4) and paragraph (b) of subsection
1335 (13) of section 985.4815, Florida Statutes, are amended to read:

1336 985.4815 Notification to Department of Law Enforcement of
1337 information on juvenile sexual offenders.-

1338 (4) A sexual offender, as described in this section, who
1339 is under the supervision of the department but who is not
1340 committed must register with the department within 3 business
1341 days after adjudication and disposition for a registrable
1342 offense and otherwise provide information as required by this
1343 subsection.

1344 (a) The sexual offender shall provide his or her name;
1345 date of birth; social security number; race; sex; height;
1346 weight; hair and eye color; tattoos or other identifying marks;
1347 the make, model, color, registration number, and license tag
1348 number of all vehicles owned; permanent or legal residence and
1349 address of temporary residence within the state or out of state
1350 while the sexual offender is in the care or custody or under the
1351 jurisdiction or supervision of the department in this state,
1352 including any rural route address or post office box; if no

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1353 permanent or temporary address, any transient residence;
1354 address, location or description, and dates of any current or
1355 known future temporary residence within the state or out of
1356 state; and the name and address of each school attended. The
1357 sexual offender must also produce his or her passport, if he or
1358 she has a passport, and, if he or she is an alien, must produce
1359 or provide information about documents establishing his or her
1360 immigration status. The offender must also provide information
1361 about any professional licenses he or she may have. The
1362 department shall verify the address of each sexual offender and
1363 shall report to the Department of Law Enforcement any failure by
1364 a sexual offender to comply with registration requirements.

1365 (b) If the sexual offender is enrolled, employed,
1366 volunteering, or carrying on a vocation at an institution of
1367 higher education in this state, the sexual offender shall
1368 provide the name, address, and county of each institution,
1369 including each campus attended, and the sexual offender's
1370 enrollment, volunteer, or employment status. Each change in
1371 enrollment, volunteer, or employment status shall be reported to
1372 the department within 48 hours after the change in status. The
1373 department shall promptly notify each institution of the sexual
1374 offender's presence and any change in the sexual offender's
1375 enrollment, volunteer, or employment status.

1376 (13)

1377 (b) The sheriff's office may determine the appropriate
1378 times and days for reporting by the sexual offender, which shall
1379 be consistent with the reporting requirements of this

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1380 subsection. Reregistration shall include any changes to the
1381 following information:

1382 1. Name; social security number; age; race; sex; date of
1383 birth; height; weight; hair and eye color; fingerprints; palm
1384 prints; address of any permanent residence and address of any
1385 current temporary residence, within the state or out of state,
1386 including a rural route address and a post office box; if no
1387 permanent or temporary address, any transient residence;
1388 address, location or description, and dates of any current or
1389 known future temporary residence within the state or out of
1390 state; passport information, if he or she has a passport, and,
1391 if he or she is an alien, information about documents
1392 establishing his or her immigration status; name and address of
1393 each school attended; date and place of any employment; the
1394 ~~vehicle~~ make, model, color, registration number, and license tag
1395 number of all vehicles owned; fingerprints, and photograph. A
1396 post office box shall not be provided in lieu of a physical
1397 residential address. The offender must also provide information
1398 about any professional licenses he or she may have.

1399 2. If the sexual offender is enrolled, employed,
1400 volunteering, or carrying on a vocation at an institution of
1401 higher education in this state, the sexual offender shall also
1402 provide to the department the name, address, and county of each
1403 institution, including each campus attended, and the sexual
1404 offender's enrollment, volunteer, or employment status.

1405 3. If the sexual offender's place of residence is a motor
1406 vehicle, trailer, mobile home, or manufactured home, as defined
1407 in chapter 320, the sexual offender shall also provide the

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1408 vehicle identification number; the license tag number; the
1409 registration number; and a description, including color scheme,
1410 of the motor vehicle, trailer, mobile home, or manufactured
1411 home. If the sexual offender's place of residence is a vessel,
1412 live-aboard vessel, or houseboat, as defined in chapter 327, the
1413 sexual offender shall also provide the hull identification
1414 number; the manufacturer's serial number; the name of the
1415 vessel, live-aboard vessel, or houseboat; the registration
1416 number; and a description, including color scheme, of the
1417 vessel, live-aboard vessel, or houseboat.

1418 4. Any sexual offender who fails to report in person as
1419 required at the sheriff's office, ~~or~~ who fails to respond to any
1420 address verification correspondence from the department within 3
1421 weeks after the date of the correspondence, or who knowingly
1422 provides false registration information by act or omission
1423 commits a felony of the third degree, punishable as provided in
1424 ss. 775.082, 775.083, and 775.084.

1425 Section 14. Subsection (13) is added to section 947.1405,
1426 Florida Statutes, to read:

1427 947.1405 Conditional release program.—

1428 (13) In addition to all other conditions imposed, for a
1429 releasee who is subject to conditional release for a crime that
1430 was committed on or after July 1, 2012, and who has been
1431 convicted at any time of a violation of s. 800.04(7)(b) or s.
1432 847.0135(4), or a similar offense in another jurisdiction, the
1433 commission must order electronic monitoring for the duration of
1434 the releasee's supervision.

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1435 Section 15. Subsection (5) is added to section 948.30,
1436 Florida Statutes, to read:

1437 948.30 Additional terms and conditions of probation or
1438 community control for certain sex offenses.—Conditions imposed
1439 pursuant to this section do not require oral pronouncement at
1440 the time of sentencing and shall be considered standard
1441 conditions of probation or community control for offenders
1442 specified in this section.

1443 (5) Effective for a probationer or community controllee
1444 whose crime was committed on or after July 1, 2012, and who:

1445 (a)1. Is placed on probation or community control for a
1446 violation of s. 800.04(7)(b) or s. 847.0135(4); or

1447 2. Has previously been convicted of a violation of s.
1448 800.04(7)(b) or s. 847.0135(4), or a similar offense in another
1449 jurisdiction,

1450
1451 the court must order, in addition to any other requirements of
1452 this section, mandatory electronic monitoring as a condition of
1453 the probation or community control supervision.

1454 Section 16. Paragraphs (g) and (i) of subsection (3) of
1455 section 921.0022, Florida Statutes, are amended to read:

1456 921.0022 Criminal Punishment Code; offense severity
1457 ranking chart.—

1458 (3) OFFENSE SEVERITY RANKING CHART

1459 (g) LEVEL 7

1460

Florida	Felony	Description
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	Amendment No. 1 Statute	Degree	
1461	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
1462	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
1463	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1464	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1465	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1466	409.920	3rd	Medicaid provider fraud;

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1467	(2) (b) 1.a.		\$10,000 or less.
	409.920	2nd	Medicaid provider fraud; more
	(2) (b) 1.b.		than \$10,000, but less than
1468			\$50,000.
	456.065(2)	3rd	Practicing a health care
1469			profession without a license.
	456.065(2)	2nd	Practicing a health care
			profession without a license
			which results in serious bodily
			injury.
1470			
	458.327(1)	3rd	Practicing medicine without a
			license.
1471			
	459.013(1)	3rd	Practicing osteopathic medicine
			without a license.
1472			
	460.411(1)	3rd	Practicing chiropractic
			medicine without a license.
1473			
	461.012(1)	3rd	Practicing podiatric medicine
			without a license.
1474			
	462.17	3rd	Practicing naturopathy without

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1475			a license.
1476	463.015(1)	3rd	Practicing optometry without a license.
1477	464.016(1)	3rd	Practicing nursing without a license.
1478	465.015(2)	3rd	Practicing pharmacy without a license.
1479	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1480	467.201	3rd	Practicing midwifery without a license. .
1481	468.366	3rd	Delivering respiratory care services without a license.
1482	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1483	483.901(9)	3rd	Practicing medical physics without a license.

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1484	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1485	484.053	3rd	Dispensing hearing aids without a license.
1486	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
1487	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1488	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial

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institution.

1489

775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver ~~driver's~~ license or identification card; other registration violations.

1490

775.21(10)(b) 3rd Sexual predator working where children regularly congregate.

1491

775.21(10)(g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

1492

782.051(3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

1493

782.07(1) 2nd Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

1494

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1495	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
1496	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1497	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1498	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1499	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1500	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1501	784.048(7)	3rd	Aggravated stalking; violation of court order.

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1502	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1503	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1504	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1505	784.081(1)	1st	Aggravated battery on specified official or employee.
1506	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1507	784.083(1)	1st	Aggravated battery on code inspector.
1508	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1509	790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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1510	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1511	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1512	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1513	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1514	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger

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1515			than 18 years of age.
	796.03	2nd	Procuring any person under <u>18</u> 16 years for prostitution.
1516			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
1517			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
1518			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1519			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1520			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1521			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault

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or battery.

1522

810.02(3)(e) 2nd Burglary of authorized
emergency vehicle.

1523

812.014(2)(a)1. 1st Property stolen, valued at
\$100,000 or more or a
semitrailer deployed by a law
enforcement officer; property
stolen while causing other
property damage; 1st degree
grand theft.

1524

812.014(2)(b)2. 2nd Property stolen, cargo valued
at less than \$50,000, grand
theft in 2nd degree.

1525

812.014(2)(b)3. 2nd Property stolen, emergency
medical equipment; 2nd degree
grand theft.

1526

812.014(2)(b)4. 2nd Property stolen, law
enforcement equipment from
authorized emergency vehicle.

1527

812.0145(2)(a) 1st Theft from person 65 years of
age or older; \$50,000 or more.

1528

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1529	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1530	812.131(2) (a)	2nd	Robbery by sudden snatching.
1531	812.133(2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1532	817.234(8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1533	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1534	817.234(11) (c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 455 (2012)

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insolvency of that entity.

1535

825.102(3)(b) 2nd Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

1536

825.103(2)(b) 2nd Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.

1537

827.03(3)(b) 2nd Neglect of a child causing great bodily harm, disability, or disfigurement.

1538

827.04(3) 3rd Impregnation of a child under 16 years of age by person 21 years of age or older.

1539

837.05(2) 3rd Giving false information about alleged capital felony to a law enforcement officer.

1540

838.015 2nd Bribery.

1541

838.016 2nd Unlawful compensation or reward

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			for official behavior.
1542	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1543	838.22	2nd	Bid tampering.
1544	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1545	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1546	872.06	2nd	Abuse of a dead human body.
1547	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1548	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child

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1554	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1555	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
1556	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
1557	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
1558	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1559	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5

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			kilograms.
1560	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1561	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
1562	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1563	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1564	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1565	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent

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			to leave; failure to comply with reporting requirements.
1566	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
1567	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1568	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1569	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1570	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1571	944.607(12)	3rd	Failure to report or providing false information about a

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1572			sexual offender; harbor or conceal a sexual offender.
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1573			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1574			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1575			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1576			
1577	(i)	LEVEL 9	
1578			
	Florida	Felony	
	Statute	Degree	Description
1579			

COMMITTEE/SUBCOMMITTEE AMENDMENT

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1580	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
1581	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
1582	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
1583	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
1584	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
1585	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
1586	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

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1587	775.0844	1st	Aggravated white collar crime.
1588	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1589	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
1590	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
1591	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
1592	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
1593	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.

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1594	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
1595	787.02(3)(a)	1st, <u>PBL</u>	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
1596	790.161	1st	Attempted capital destructive device offense.
1597	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
1598	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a

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Bill No. HB 455 (2012)

Amendment No. 1

1599			person less than 12 years.
1600	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
1601	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
1602	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
1603	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1604	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
1605	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
1606	812.135(2)(b)	1st	Home-invasion robbery with weapon.

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1607	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
1608	827.03(2)	1st	Aggravated child abuse.
1609	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
1610	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1611	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
1612	893.135	1st	Attempted capital trafficking offense.

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Bill No. HB 455 (2012)

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1613	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1614	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1615	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
1616	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1617	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
1618	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
1619	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
1620	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.

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Amendment No. 1

893.135 1st Trafficking in Phenethylamines,
(1) (k) 2.c. 400 grams or more.

1621

896.101(5) (c) 1st Money laundering, financial
instruments totaling or
exceeding \$100,000.

1622

896.104(4) (a) 3. 1st Structuring transactions to
evade reporting or registration
requirements, financial
transactions totaling or
exceeding \$100,000.

1623

1624 Section 17. This act shall take effect October 1, 2012.

1625

1626

1627

1628

1629

T I T L E A M E N D M E N T

1630

Remove the entire title and insert:

1631

An act relating to sex offenses; amending s. 775.21,

1632

F.S.; replacing the definition of the term "instant

1633

message name" with the definition of the term

1634

"Internet identifier"; providing that voluntary

1635

disclosure of specified information waives a

1636

disclosure exemption for such information; conforming

1637

provisions; adding additional offenses to the list of

1638

sexual predator qualifying offenses; requiring

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 455 (2012)

Amendment No. 1

1639 disclosure of additional information during the sexual
1640 predator registration process; requiring that a sexual
1641 predator who is unable to secure or update a driver
1642 license or identification card within a specified
1643 period must report specified information to the local
1644 sheriff's office within a specified period after such
1645 change with confirmation that he or she also reported
1646 such information to the Department of Highway Safety
1647 and Motor Vehicles; revising reporting requirements if
1648 a sexual predator plans to leave the United States for
1649 more than a specified period; providing criminal
1650 penalties for knowingly providing false registration
1651 information by act or omission; amending s. 800.03,
1652 F.S.; providing enhanced penalties for third or
1653 subsequent indecent exposure violations; amending s.
1654 903.046, F.S.; requiring a court considering whether
1655 to release a defendant on bail to determine whether
1656 the defendant is subject to registration as a sexual
1657 offender or sexual predator and, if so, to hold the
1658 defendant without bail until the first appearance on
1659 the case; providing an exception; amending s.
1660 943.0435, F.S.; adding additional offenses to the list
1661 of sexual offender qualifying offenses; replacing the
1662 definition of the term "instant message name" with the
1663 definition of the term "Internet identifier";
1664 conforming provisions; requiring disclosure of
1665 additional sexual offender registration information;
1666 requiring that a sexual offender who is unable to

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 455 (2012)

Amendment No. 1

1667 secure or update a driver license or identification
1668 card within a specified period must report specified
1669 information to the local sheriff's office within a
1670 specified period of such change with confirmation that
1671 he or she also reported such information to the
1672 Department of Highway Safety and Motor Vehicles;
1673 providing additional requirements for sexual offenders
1674 intending to reside outside of the United States;
1675 revising criteria applicable to provisions allowing
1676 removal from the requirement to register as a sexual
1677 offender; providing criminal penalties for knowingly
1678 providing false registration information by act or
1679 omission; amending s. 943.04351, F.S.; requiring a
1680 specified national search of registration information
1681 regarding sexual predators and sexual offenders prior
1682 to appointment or employment of persons by state
1683 agencies and governmental subdivisions; amending s.
1684 943.04354, F.S.; revising the criteria applicable to
1685 provisions allowing removal of the requirement to
1686 register as a sexual offender or sexual predator;
1687 amending s. 943.0437, F.S.; replacing the term
1688 "instant message name" with the term "Internet
1689 identifier"; amending ss. 944.606 and 944.607, F.S.;
1690 adding additional offenses to the list of sexual
1691 offender qualifying offenses; replacing the definition
1692 of the term "instant message name" with the definition
1693 of the term "Internet identifier"; conforming
1694 provisions; requiring disclosure of additional

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Bill No. HB 455 (2012)

Amendment No. 1

1695 registration information; providing criminal penalties
1696 for knowingly providing false registration information
1697 by act or omission; amending s. 947.005, F.S.;

1698 revising the definition of the term "risk assessment";
1699 amending s. 948.31, F.S.; authorizing the court to
1700 require sexual offenders and sexual predators who are
1701 on probation or community control to undergo an
1702 evaluation to determine whether the offender or
1703 predator needs sexual offender treatment; requiring
1704 the probationer or community controllee to pay for the
1705 treatment; removing a provision prohibiting contact
1706 with minors if sexual offender treatment is
1707 recommended; amending ss. 985.481 and 985.4815, F.S.;

1708 requiring disclosure of additional registration
1709 information by certain sexual offenders adjudicated
1710 delinquent and certain juvenile sexual offenders;
1711 providing criminal penalties for knowingly providing
1712 false registration information by act or omission;
1713 amending s. 947.1405, F.S.; requiring the commission
1714 to order electronic monitoring for certain conditional
1715 releasees; amending s. 948.30, F.S., requiring the
1716 court to order electronic monitoring for certain
1717 offenders; amending s. 921.0022, F.S.; correcting
1718 references; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 497 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Porth offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (c), (e), and (f) of subsection (3)
8 and subsection (5) of section 943.0582, Florida Statutes, are
9 amended to read:

10 943.0582 Prearrest, postarrest, or teen court diversion
11 program expunction.—

12 (3) The department shall expunge the nonjudicial arrest
13 record of a minor who has successfully completed a prearrest or
14 postarrest diversion program if that minor:

15 (c) Submits to the department, with the application, an
16 official written statement from the state attorney for the
17 county in which the arrest occurred certifying that he or she
18 has successfully completed that county's prearrest or postarrest
19 diversion program and that he or she participated in the program

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 497 (2012)

Amendment No. 1

20 ~~based on an arrest for participation in the program is strictly~~
21 ~~limited to minors arrested for a nonviolent misdemeanor, or for~~
22 ~~a felony that does not relate to a violation of s. 393.135, s.~~
23 ~~394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.~~
24 ~~810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.~~
25 ~~847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a~~
26 ~~violation enumerated in s. 907.041, or any violation specified~~
27 ~~as a predicate offense for registration as a sexual predator~~
28 ~~pursuant to s. 775.21, without regard to whether that offense~~
29 ~~alone is sufficient to require such registration, or for~~
30 ~~registration as a sexual offender pursuant to s. 943.0435, who~~
31 have not otherwise been charged with or found to have committed
32 any criminal offense or comparable ordinance violation.

33 ~~(e) Participated in a prearrest or postarrest diversion~~
34 ~~program based on an arrest for a nonviolent misdemeanor that~~
35 ~~would not qualify as an act of domestic violence as that term is~~
36 ~~defined in s. 741.28.~~

37 ~~(e)(f)~~ Has never, prior to filing the application for
38 expunction, been charged with or been found to have committed
39 any criminal offense or comparable ordinance violation.

40 (5) This section operates retroactively to permit the
41 expunction of any nonjudicial record of the arrest of a minor
42 who has successfully completed a prearrest or postarrest
43 diversion program on or after July 1, 2000; however, in the case
44 of a minor whose completion of the program occurred before the
45 effective date of this section, the application for prearrest or
46 postarrest diversion expunction must be submitted within 12 6
47 months after the effective date of this section.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 497 (2012)

Amendment No. 1

48 Section 2. This act shall take effect July 1, 2012.

49

50

51

T I T L E A M E N D M E N T

52

Remove the entire title and insert:

53

An act relating to juvenile expunction; amending s. 943.0582,

54

F.S.; allowing minors who have certain felony arrests to have

55

the Department of Law Enforcement expunge their nonjudicial

56

arrest record upon successful completion of a prearrest or

57

postarrest diversion program; extending the application

58

submission date for minors who complete the program before the

59

effective date of this section; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 947 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Boyd offered the following:

4
5 **Amendment**

6 Remove lines 53-63 and insert:
7 defined in s. 790.001, or such a person convicted for possession
8 of a firearm by a felon has a previous conviction of a felony or
9 an attempt to commit a felony listed in s. 775.084(1)(b)1,
10 shall be sentenced to a minimum term of imprisonment of 10
11 years, except that a person who is convicted for aggravated
12 assault, possession of a firearm by a felon, or burglary of a
13 conveyance shall be sentenced to a minimum term of imprisonment
14 of 3 years if such person possessed a "firearm" or "destructive
15 device" during the commission of the offense.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1045 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove lines 131-133 and insert:

7 required training course within the previous 5 years. Once
8 trained, experts must retake the required training course every
9 5 years in order to remain on the registry. Those who have not
10 completed the training course or have not retaken the training
11 course within 5 years must be removed from the registry and may
12 not conduct competency evaluations for the courts.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1045 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove lines 275-284 and insert:

7 Statistical Manual of Mental Disorders of the American
8 Psychiatric Association and must be presented in a section of
9 his or her competency evaluation report that shall be identified
10 as a summary of findings. This section must include:

11 1. The day, month, year, and length of time of the face-
12 to-face diagnostic clinical interview to determine the child's
13 mental condition.

14 2. A statement that identifies the mental disorder causing
15 the child's incompetence. In reporting on the mental disorder,
16 the evaluator shall use the clinical name and associated
17 diagnostic code found in the most recent edition of the
18 Diagnostic and Statistical Manual of Mental Disorders of the
19 American Psychiatric Association.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1045 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove lines 347-350 and insert:

7 course within the previous 5 years. Once trained, an expert must
8 retake the required training course every 5 years in order to
9 remain on the registry. An expert who has not completed the
10 required training course or has not retaken the training course
11 within 5 years must be removed from the registry and may not
12 conduct competency evaluations for the courts.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1097 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Kreegel offered the following:

4
5 **Amendment (with title amendment)**

6 Remove line 144 and insert:

7 (1) Except as authorized by law or as specifically
8 authorized by the person in charge of a secure facility
9 providing secure confinement and treatment under this part, it
10 is unlawful to

11
12
13
14 -----
15 **T I T L E A M E N D M E N T**

16 Remove line 29 and insert:

17 penalties for violations; providing exceptions; providing an
18 effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1097 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED — (Y/N)
ADOPTED AS AMENDED — (Y/N)
ADOPTED W/O OBJECTION — (Y/N)
FAILED TO ADOPT — (Y/N)
WITHDRAWN — (Y/N)
OTHER —

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Kreegel offered the following:

4

5 **Amendment**

6 Remove lines 41-87 and insert:

7 Section 2. Paragraph (e) of subsection (3) of section

8 394.913, Florida Statutes, is amended to read:

9 394.913 Notice to state attorney and multidisciplinary
10 team of release of sexually violent predator; establishing
11 multidisciplinary teams; information to be provided to
12 multidisciplinary teams.—

13 (3)

14 (e)1. Within 180 days after receiving notice, there shall

15 be a written assessment as to whether the person meets the

16 definition of a sexually violent predator and a written

17 recommendation, which shall be provided to the state attorney.

18 The written recommendation shall be provided by the Department

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19 of Children and Family Services and shall include the written
20 report of the multidisciplinary team.

21 2. Notwithstanding sub-paragraph 1., in the case of a
22 person for whom the written assessment and recommendation has
23 not been completed at least 365 days prior to his or her release
24 from total confinement, the department shall prioritize the
25 assessment of that person based upon the person's release date.

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Bill No. HB 1099 (2012)

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ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Plakon offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 784.048, Florida Statutes, is amended to
8 read:

9 784.048 Stalking; definitions; penalties.-

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

11 (a) "Harass" means to engage in a course of conduct
12 directed at a specific person which ~~that~~ causes substantial
13 emotional distress to that ~~in such~~ person and serves no
14 legitimate purpose.

15 (b) "Course of conduct" means a pattern of conduct
16 composed of a series of acts over a period of time, however
17 short, which evidence ~~evidencing~~ a continuity of purpose. The
18 term does not include constitutionally protected activity such
19 as is not included within the meaning of "course of conduct."

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20 ~~Such constitutionally protected activity includes picketing or~~
21 other organized protests.

22 (c) "Credible threat" means a verbal or nonverbal threat,
23 including a threat delivered by electronic communication or a
24 threat implied by a pattern of conduct, or a combination of the
25 two, which places the person who is the target of the threat in
26 reasonable fear for his or her safety or the safety of his or
27 her immediate family or household member, as defined in s.
28 741.28, and which is made with the apparent ability to carry out
29 the threat to cause such harm. It is not necessary to prove that
30 the person making the threat had the intent to actually carry
31 out the threat. The present incarceration of the person making
32 the threat is not a bar to prosecution under this section ~~made~~
33 ~~with the intent to cause the person who is the target of the~~
34 ~~threat to reasonably fear for his or her safety. The threat must~~
35 ~~be against the life of, or a threat to cause bodily injury to, a~~
36 ~~person.~~

37 (d) "Cyberstalk" means to engage in a course of conduct to
38 communicate, or to cause to be communicated, words, images, or
39 language by or through the use of electronic mail or electronic
40 communication, directed at a specific person, causing
41 substantial emotional distress to that person and serving no
42 legitimate purpose.

43 (e) "Immediate family" means a person's spouse, parent,
44 child, grandparent, or sibling.

45 (2) A ~~Any~~ person who willfully, maliciously, and
46 repeatedly follows, harasses, or cyberstalks another person
47 commits the offense of stalking, a misdemeanor of the first

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48 degree, punishable as provided in s. 775.082 or s. 775.083.

49 (3) A ~~Any~~ person who willfully, maliciously, and
50 repeatedly follows, harasses, or cyberstalks another person, and
51 makes a credible threat to that person ~~with the intent to place~~
52 ~~that person in reasonable fear of death or bodily injury of the~~
53 ~~person, or the person's child, sibling, spouse, parent, or~~
54 ~~dependent,~~ commits the offense of aggravated stalking, a felony
55 of the third degree, punishable as provided in s. 775.082, s.
56 775.083, or s. 775.084.

57 (4) A ~~Any~~ person who, after an injunction for protection
58 against repeat violence, sexual violence, or dating violence
59 pursuant to s. 784.046, or an injunction for protection against
60 domestic violence pursuant to s. 741.30, or after any other
61 court-imposed prohibition of conduct toward the subject person
62 or that person's property, knowingly, willfully, maliciously,
63 and repeatedly follows, harasses, or cyberstalks another person
64 commits the offense of aggravated stalking, a felony of the
65 third degree, punishable as provided in s. 775.082, s. 775.083,
66 or s. 775.084.

67 (5) A ~~Any~~ person who willfully, maliciously, and
68 repeatedly follows, harasses, or cyberstalks a child ~~minor~~ under
69 16 years of age commits the offense of aggravated stalking, a
70 felony of the third degree, punishable as provided in s.
71 775.082, s. 775.083, or s. 775.084.

72 (6) A ~~Any~~ law enforcement officer may arrest, without a
73 warrant, any person that he or she has probable cause to believe
74 has violated ~~the provisions of~~ this section.

75 (7) A ~~Any~~ person who, after having been sentenced for a

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76 violation of s. 794.011, s. 800.04, or s. 847.0135(5) and
77 prohibited from contacting the victim of the offense under s.
78 921.244, willfully, maliciously, and repeatedly follows,
79 harasses, or cyberstalks the victim commits the offense of
80 aggravated stalking, a felony of the third degree, punishable as
81 provided in s. 775.082, s. 775.083, or s. 775.084.

82 (8) The punishment imposed under this section shall run
83 consecutive to any former sentence imposed for a conviction for
84 any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

85 (9)(a) The sentencing court shall consider, as a part of
86 any sentence, issuing an injunction restraining the defendant
87 from any contact with the victim, which may be valid for up to
88 10 years, as determined by the court. It is the intent of the
89 Legislature that the length of any such restraining order be
90 based upon the seriousness of the facts before the court, the
91 probability of future violations by the perpetrator, and the
92 safety of the victim and his or her immediate family.

93 (b) The injunction may be issued by the court even if the
94 defendant is sentenced to a state prison or a county jail or
95 even if the imposition of the sentence is suspended and the
96 defendant is placed on probation.

97 Section 2. Section 784.0485, Florida Statutes, is created
98 to read:

99 784.0485 Stalking or cyberstalking; injunction; powers and
100 duties of court and clerk; petition; notice and hearing;
101 temporary injunction; issuance of injunction; statewide
102 verification system; enforcement.-

103 (1) There is created a cause of action for an injunction

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104 for protection against stalking or cyberstalking.

105 (a) A person who is the victim of stalking or
106 cyberstalking has standing in the circuit court to file a sworn
107 petition for an injunction for protection against stalking or
108 cyberstalking.

109 (b) The cause of action for an injunction for protection
110 may be sought regardless of whether any other cause of action is
111 currently pending between the parties. However, the pendency of
112 any such cause of action shall be alleged in the petition.

113 (c) The cause of action for an injunction may be sought by
114 any affected person.

115 (d) The cause of action for an injunction does not require
116 either party to be represented by an attorney.

117 (e) The court may not issue mutual orders of protection;
118 however, the court is not precluded from issuing separate
119 injunctions for protection against stalking or cyberstalking if
120 each party has complied with this section. Compliance with this
121 section may not be waived.

122 (f) Notwithstanding chapter 47, a petition for an
123 injunction for protection against stalking or cyberstalking may
124 be filed in the circuit where the petitioner currently or
125 temporarily resides, where the respondent resides, or where the
126 stalking or cyberstalking occurred. There is no minimum
127 requirement of residency to petition for an injunction for
128 protection.

129 (2)(a) Notwithstanding any other law, the clerk of court
130 may not assess a filing fee to file a petition for protection
131 against stalking or cyberstalking. However, subject to

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132 legislative appropriation, the clerk of the circuit court may,
133 on a quarterly basis, submit to the Office of the State Courts
134 Administrator a certified request for reimbursement for
135 petitions for protection against stalking or cyberstalking
136 issued by the court, at the rate of \$40 per petition. The
137 request for reimbursement shall be submitted in the form and
138 manner prescribed by the Office of the State Courts
139 Administrator. From this reimbursement, the clerk shall pay any
140 law enforcement agency serving the injunction the fee requested
141 by the law enforcement agency; however, this fee may not exceed
142 \$20.

143 (b) A bond is not required by the court for the entry of
144 an injunction.

145 (c)1. The clerk of the court shall assist petitioners in
146 seeking both injunctions for protection against stalking and
147 enforcement of a violation thereof as specified in this section.

148 2. All offices of the clerk of the court shall provide
149 simplified petition forms for the injunction and any
150 modifications to and the enforcement thereof, including
151 instructions for completion.

152 3. The clerk of the court shall ensure the petitioner's
153 privacy to the extent practicable while completing the forms for
154 an injunction for protection against stalking or cyberstalking.

155 4. The clerk of the court shall provide a petitioner with
156 a minimum of two certified copies of the order of injunction,
157 one of which is serviceable and will inform the petitioner of
158 the process for service and enforcement.

159 5. The clerk of the court and appropriate staff in each

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160 | county shall receive training in the effective assistance of
161 | petitioners as provided or approved by the Florida Association
162 | of Court Clerks.

163 | 6. The clerk of the court in each county shall make
164 | available informational brochures on stalking when such a
165 | brochure is provided by the local certified domestic violence
166 | center.

167 | 7. The clerk of the court in each county shall distribute
168 | a statewide uniform informational brochure to petitioners at the
169 | time of filing for an injunction for protection against stalking
170 | or cyberstalking when such brochures become available. The
171 | brochure must include information about the effect of giving the
172 | court false information.

173 | (3) (a) The sworn petition shall allege the existence of
174 | such stalking or cyberstalking and shall include the specific
175 | facts and circumstances for which relief is sought.

176 | (b) The sworn petition shall be in substantially the
177 | following form:

178 |
179 | PETITION FOR INJUNCTION FOR PROTECTION AGAINST STALKING

180 |
181 | Before me, the undersigned authority, personally appeared
182 | Petitioner....(Name)...., who has been sworn and says that
183 | the following statements are true:

184 |
185 | 1. Petitioner resides at:....(address)....

186 | (Petitioner may furnish the address to the court in a
187 | separate confidential filing if, for safety reasons,

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- 188 the petitioner requires the location of the current
189 residence to be confidential.)
190 2. Respondent resides at:....(last known address)....
191 3. Respondent's last known place of employment:....(name
192 of business and address)....
193 4. Physical description of respondent:....
194 5. Race....
195 6. Sex....
196 7. Date of birth....
197 8. Height....
198 9. Weight....
199 10. Eye color....
200 11. Hair color....
201 12. Distinguishing marks or scars....
202 13. Aliases of respondent:....

203
204 (c) The petitioner shall describe any other cause of
205 action currently pending between the petitioner and respondent.
206 The petitioner shall also describe any previous attempt by the
207 petitioner to obtain an injunction for protection against
208 stalking or cyberstalking in this or any other circuit, and the
209 result of that attempt. (Case numbers should be included, if
210 available.)

211 (d) The petition must provide space for the petitioner to
212 specifically allege that he or she is a victim of stalking or
213 cyberstalking because respondent has:

214
215 (Mark all sections that apply and describe in the spaces below

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216 the incidents of stalking or cyberstalking specifying when and
217 where they occurred, including, but not limited to, locations
218 such as a home, school, or place of employment.)

219

220 Committed or threatened to commit stalking.

221 Previously threatened, harassed, stalked,

222 cyberstalked, or physically abused the petitioner.

223 Threatened to harm the petitioner or family members or

224 individuals closely associated with the petitioner.

225 Intentionally injured or killed a family pet.

226 Used, or has threatened to use, against the petitioner

227 any weapons such as guns or knives.

228 A criminal history involving violence or the threat of

229 violence (if known).

230 Another order of protection issued against him or her

231 previously or from another jurisdiction, if known.

232 Destroyed personal property, including, but not

233 limited to, telephones or other communication equipment,

234 clothing, or other items belonging to the petitioner.

235 (e) The petitioner seeks an injunction: (Mark appropriate

236 section or sections.)

237 Immediately restraining the respondent from committing

238 any acts of stalking or cyberstalking.

239 Restraining the respondent from committing any acts of

240 stalking or cyberstalking.

241 Providing any terms the court deems necessary for the

242 protection of a victim of stalking or cyberstalking, including

243 any injunctions or directives to law enforcement agencies.

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244 (f) Every petition for an injunction against stalking or
245 cyberstalking must contain, directly above the signature line, a
246 statement in all capital letters and bold type not smaller than
247 the surrounding text, as follows:

248
249 I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND
250 EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT
251 THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE
252 UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN
253 SECTION 837.02, FLORIDA STATUTES.

254
255(initials)....

256
257 (4) Upon the filing of the petition, the court shall set a
258 hearing to be held at the earliest possible time. The respondent
259 shall be personally served with a copy of the petition, notice
260 of hearing, and temporary injunction, if any, before the
261 hearing.

262 (5) (a) If it appears to the court that an immediate and
263 present danger of stalking or cyberstalking exists, the court
264 may grant a temporary injunction ex parte, pending a full
265 hearing, and may grant such relief as the court deems proper,
266 including an injunction restraining the respondent from
267 committing any act of stalking or cyberstalking.

268 (b) In a hearing ex parte for the purpose of obtaining
269 such ex parte temporary injunction, evidence other than verified
270 pleadings or affidavits may not be used as evidence, unless the
271 respondent appears at the hearing or has received reasonable

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272 notice of the hearing. A denial of a petition for an ex parte
273 injunction shall be by written order noting the legal grounds
274 for denial. If the only ground for denial is no appearance of an
275 immediate and present danger of stalking or cyberstalking, the
276 court shall set a full hearing on the petition for injunction
277 with notice at the earliest possible time. This paragraph does
278 not affect a petitioner's right to promptly amend any petition,
279 or otherwise be heard in person on any petition consistent with
280 the Florida Rules of Civil Procedure.

281 (c) Any such ex parte temporary injunction is effective
282 for a fixed period not to exceed 15 days. A full hearing, as
283 provided in this section, shall be set for a date no later than
284 the date when the temporary injunction ceases to be effective.
285 The court may grant a continuance of the hearing before or
286 during a hearing for good cause shown by any party, which shall
287 include a continuance to obtain service of process. An
288 injunction shall be extended if necessary to remain in full
289 force and effect during any period of continuance.

290 (6) (a) Upon notice and hearing, when it appears to the
291 court that the petitioner is the victim of stalking or
292 cyberstalking, the court may grant such relief as the court
293 deems proper, including an injunction:

294 1. Restraining the respondent from committing any act of
295 stalking or cyberstalking.

296 2. Ordering the respondent to participate in treatment,
297 intervention, or counseling services to be paid for by the
298 respondent.

299 3. Referring a petitioner to a certified domestic violence

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300 center. The court must provide the petitioner with a list of
301 certified domestic violence centers in the circuit which the
302 petitioner may contact.

303 4. Ordering such other relief as the court deems necessary
304 for the protection of a victim of stalking or cyberstalking,
305 including injunctions or directives to law enforcement agencies,
306 as provided in this section.

307 (b) When determining whether a petitioner has reasonable
308 cause to believe that there is a credible threat that he or she
309 is in imminent danger of becoming a victim of stalking or
310 cyberstalking, the court shall consider and evaluate all
311 relevant factors alleged in the petition, including, but not
312 limited to:

313 1. The history between the petitioner and the respondent,
314 including threats, harassment, stalking or cyberstalking, and
315 physical abuse.

316 2. Whether the respondent has attempted to harm the
317 petitioner or family members or individuals closely associated
318 with the petitioner.

319 3. Whether the respondent has intentionally injured or
320 killed a family pet.

321 4. Whether the respondent has used, or has threatened to
322 use, against the petitioner any weapons such as guns or knives.

323 5. Whether the respondent has a criminal history involving
324 violence or the threat of violence.

325 6. The existence of a verifiable order of protection
326 issued previously or from another jurisdiction.

327 7. Whether the respondent has destroyed personal property,

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328 including, but not limited to, telephones or other
329 communications equipment, clothing, or other items belonging to
330 the petitioner.

331

332 In making its determination under this paragraph, the court is
333 not limited to those factors enumerated in subparagraphs 1.-7.

334 (c) The terms of an injunction restraining the respondent
335 under subparagraph (a)1. or ordering other relief for the
336 protection of the victim under subparagraph (a)4. shall remain
337 in effect until modified or dissolved. Either party may move at
338 any time to modify or dissolve the injunction. Specific
339 allegations are not required. Such relief may be granted in
340 addition to other civil or criminal remedies.

341 (d) A temporary or final judgment on injunction for
342 protection against stalking or cyberstalking entered pursuant to
343 this section shall, on its face, indicate that:

344 1. The injunction is valid and enforceable in all counties
345 of this state.

346 2. Law enforcement officers may use their arrest powers
347 pursuant to s. 901.15(6) to enforce the terms of the injunction.

348 3. The court has jurisdiction over the parties and matter
349 under the laws of this state and that reasonable notice and
350 opportunity to be heard was given to the person against whom the
351 order is sought sufficient to protect that person's right to due
352 process.

353 4. The date that the respondent was served with the
354 temporary or final order, if obtainable.

355 (e) The fact that a separate order of protection is

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356 granted to each opposing party is not legally sufficient to deny
357 any remedy to either party or to prove that the parties are
358 equally at fault or equally endangered.

359 (f) A final judgment on an injunction for protection
360 against stalking or cyberstalking entered pursuant to this
361 section may, on its face, provide that it is a violation of s.
362 790.233 and a misdemeanor of the first degree for the respondent
363 to have in his or her care, custody, possession, or control any
364 firearm or ammunition.

365 (g) All proceedings under this subsection shall be
366 recorded. Recording may be by electronic means as provided by
367 the Rules of Judicial Administration.

368 (7) The court shall allow an advocate from a state
369 attorney's office, a law enforcement agency, or a certified
370 domestic violence center who is registered under s. 39.905 to be
371 present with the petitioner or respondent during any court
372 proceedings or hearings related to the injunction for protection
373 if the petitioner or respondent has made such a request and the
374 advocate is able to be present.

375 (8)(a)1. The clerk of the court shall furnish a copy of
376 the petition, notice of hearing, and temporary injunction, if
377 any, to the sheriff or a law enforcement agency of the county
378 where the respondent resides or can be found, who shall serve it
379 upon the respondent as soon thereafter as possible on any day of
380 the week and at any time of the day or night. When requested by
381 the sheriff, the clerk of the court may transmit a facsimile
382 copy of an injunction that has been certified by the clerk of
383 the court, and this facsimile copy may be served in the same

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384 manner as a certified copy. Upon receiving a facsimile copy, the
385 sheriff must verify receipt with the sender before attempting to
386 serve it on the respondent. In addition, if the sheriff is in
387 possession of an injunction for protection which has been
388 certified by the clerk of the court, the sheriff may transmit a
389 facsimile copy of that injunction to a law enforcement officer
390 who shall serve it in the same manner as a certified copy. The
391 clerk of the court shall furnish to the sheriff such information
392 concerning the respondent's physical description and location as
393 is required by the department to comply with the verification
394 procedures set forth in this section. Notwithstanding any other
395 law, the chief judge of each circuit, in consultation with the
396 appropriate sheriff, may authorize a law enforcement agency
397 within the jurisdiction to effect service. A law enforcement
398 agency serving injunctions pursuant to this section shall use
399 service and verification procedures consistent with those of the
400 sheriff.

401 2. If an injunction is issued and the petitioner requests
402 the assistance of a law enforcement agency, the court may order
403 that an officer from the appropriate law enforcement agency
404 accompany the petitioner to assist in the execution or service
405 of the injunction. A law enforcement officer shall accept a copy
406 of an injunction for protection against stalking, certified by
407 the clerk of the court, from the petitioner and immediately
408 serve it upon a respondent who has been located but not yet
409 served.

410 3. An order issued, changed, continued, extended, or
411 vacated subsequent to the original service of documents

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412 enumerated under subparagraph 1. shall be certified by the clerk
413 of the court and delivered to the parties at the time of the
414 entry of the order. The parties may acknowledge receipt of such
415 order in writing on the face of the original order. If a party
416 fails or refuses to acknowledge the receipt of a certified copy
417 of an order, the clerk shall note on the original order that
418 service was effected. If delivery at the hearing is not
419 possible, the clerk shall mail certified copies of the order to
420 the parties at the last known address of each party. Service by
421 mail is complete upon mailing. When an order is served pursuant
422 to this subsection, the clerk shall prepare a written
423 certification to be placed in the court file specifying the
424 time, date, and method of service and shall notify the sheriff.

425 4. If the respondent has been served previously with a
426 temporary injunction and has failed to appear at the initial
427 hearing on the temporary injunction, any subsequent petition for
428 injunction seeking an extension of time may be served on the
429 respondent by the clerk of the court by certified mail in lieu
430 of personal service by a law enforcement officer.

431 (b)1. Within 24 hours after the court issues an injunction
432 for protection against stalking or cyberstalking or changes,
433 continues, extends, or vacates an injunction for protection
434 against stalking or cyberstalking, the clerk of the court must
435 forward a certified copy of the injunction for service to the
436 sheriff having jurisdiction over the residence of the
437 petitioner. The injunction must be served in accordance with
438 this subsection.

439 2. Within 24 hours after service of process of an

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440 injunction for protection against stalking or cyberstalking upon
441 a respondent, the law enforcement officer must forward the
442 written proof of service of process to the sheriff having
443 jurisdiction over the residence of the petitioner.

444 3. Within 24 hours after the sheriff receives a certified
445 copy of the injunction for protection against stalking or
446 cyberstalking, the sheriff must make information relating to the
447 injunction available to other law enforcement agencies by
448 electronically transmitting such information to the Department
449 of Law Enforcement.

450 4. Within 24 hours after the sheriff or other law
451 enforcement officer has made service upon the respondent and the
452 sheriff has been so notified, the sheriff must make information
453 relating to the service available to other law enforcement
454 agencies by electronically transmitting such information to the
455 Department of Law Enforcement.

456 5. Within 24 hours after an injunction for protection
457 against stalking or cyberstalking is vacated, terminated, or
458 otherwise rendered no longer effective by ruling of the court,
459 the clerk of the court must notify the sheriff receiving
460 original notification of the injunction as provided in
461 subparagraph 2. That agency shall, within 24 hours after
462 receiving such notification from the clerk of the court, notify
463 the Department of Law Enforcement of such action of the court.

464 (9) (a) The court may enforce a violation of an injunction
465 for protection against stalking or cyberstalking through a civil
466 or criminal contempt proceeding, or the state attorney may
467 prosecute it as a criminal violation under s. 784.0487. The

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468 court may enforce the respondent's compliance with the
469 injunction through any appropriate civil and criminal remedies,
470 including, but not limited to, a monetary assessment or a fine.
471 The clerk of the court shall collect and receive such
472 assessments or fines. On a monthly basis, the clerk shall
473 transfer the moneys collected pursuant to this paragraph to the
474 State Treasury for deposit into the Domestic Violence Trust
475 Fund.

476 (b) If the respondent is arrested by a law enforcement
477 officer under s. 901.15(6) or for a violation of s. 784.0487,
478 the respondent shall be held in custody until brought before the
479 court as expeditiously as possible for the purpose of enforcing
480 the injunction and for admittance to bail in accordance with
481 chapter 903 and the applicable rules of criminal procedure,
482 pending a hearing.

483 (10) The petitioner or the respondent may move the court
484 to modify or dissolve an injunction at any time.

485 Section 3. Section 784.0487, Florida Statutes, is created
486 to read:

487 784.0487 Violation of an injunction for protection against
488 stalking or cyberstalking.-

489 (1) If the injunction for protection against stalking or
490 cyberstalking has been violated and the respondent has not been
491 arrested, the petitioner may contact the clerk of the circuit
492 court of the county in which the violation is alleged to have
493 occurred. The clerk shall assist the petitioner in preparing an
494 affidavit in support of reporting the violation or directing the
495 petitioner to the office operated by the court that has been

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496 designated by the chief judge of that circuit as the central
497 intake point for violations of injunctions for protection where
498 the petitioner can receive assistance in the preparation of the
499 affidavit in support of the violation.

500 (2) The affidavit shall be immediately forwarded by the
501 office assisting the petitioner to the state attorney of that
502 circuit and to such judge as the chief judge determines to be
503 the recipient of affidavits of violations of an injunction. If
504 the affidavit alleges that a crime has been committed, the
505 office assisting the petitioner shall also forward a copy of the
506 petitioner's affidavit to the appropriate law enforcement agency
507 for investigation. No later than 20 days after receiving the
508 initial report, the local law enforcement agency shall complete
509 its investigation and forward a report to the state attorney.
510 The policy adopted by the state attorney in each circuit under
511 s. 741.2901(2) shall include a policy regarding intake of
512 alleged violations of injunctions for protection against
513 stalking or cyberstalking under this section. The intake shall
514 be supervised by a state attorney who has been designated and
515 assigned to handle stalking or cyberstalking cases. The state
516 attorney shall determine within 30 working days whether his or
517 her office will file criminal charges or prepare a motion for an
518 order to show cause as to why the respondent should not be held
519 in criminal contempt, or prepare both as alternative findings,
520 or file notice that the case remains under investigation or is
521 pending subject to some other action.

522 (3) If the court has knowledge that the petitioner or
523 another person is in immediate danger if the court does not act

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524 before the decision of the state attorney to proceed, the court
525 shall immediately issue an order of appointment of the state
526 attorney to file a motion for an order to show cause as to why
527 the respondent should not be held in contempt. If the court does
528 not issue an order of appointment of the state attorney, it
529 shall immediately notify the state attorney that the court is
530 proceeding to enforce the violation through criminal contempt.

531 (4) A person who willfully violates an injunction for
532 protection against stalking or cyberstalking issued pursuant to
533 s. 784.0485, or a foreign protection order accorded full faith
534 and credit pursuant to s. 741.315, by:

535 (a) Going to, or being within 500 feet of, the
536 petitioner's residence, school, place of employment, or a
537 specified place frequented regularly by the petitioner and any
538 named family or household member;

539 (b) Committing an act of stalking or cyberstalking against
540 the petitioner;

541 (c) Committing any other violation of the injunction
542 through an intentional unlawful threat, word, or act to do
543 violence to the petitioner;

544 (d) Telephoning, contacting, or otherwise communicating
545 with the petitioner, directly or indirectly, unless the
546 injunction specifically allows indirect contact through a third
547 party;

548 (e) Knowingly and intentionally coming within 100 feet of
549 the petitioner's motor vehicle, whether or not that vehicle is
550 occupied;

551 (f) Defacing or destroying the petitioner's personal

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552 property, including the petitioner's motor vehicle; or

553 (g) Refusing to surrender firearms or ammunition if
554 ordered to do so by the court,

555
556 commits a misdemeanor of the first degree, punishable as
557 provided in s. 775.082 or s. 775.083.

558 (5) A person who suffers an injury or loss as a result of
559 a violation of an injunction for protection against stalking or
560 cyberstalking may be awarded economic damages for that injury or
561 loss by the court issuing the injunction. Damages includes costs
562 and attorney fees for enforcement of the injunction.

563 Section 4. This act shall take effect October 1, 2012.

564

565

566

567

T I T L E A M E N D M E N T

568

Remove the entire title and insert:

569

An act relating to stalking and aggravated stalking; amending s.

570

784.048, F.S.; redefining the terms "course of conduct" and

571

"credible threat" and defining the term "immediate family";

572

providing that a person who makes a threat which places another

573

person in reasonable fear for his or her safety or the safety of

574

his or her immediate family commits the offense of aggravated

575

stalking under certain circumstances; requiring that the

576

sentencing court consider issuing an injunction that restrains a

577

defendant from any contact with the victim for up to 10 years;

578

providing legislative intent regarding the length of any such

579

restraining order; creating s. 784.0485, F.S.; creating a civil

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580 | cause of action for an injunction for protection against
581 | stalking or cyberstalking; providing that the victim of stalking
582 | or cyberstalking has standing in the circuit court to file a
583 | sworn petition for an injunction for protection against stalking
584 | or cyberstalking; prohibiting a court from issuing mutual orders
585 | of protection, but authorizing the court to issue a separate
586 | injunction for protection against stalking or cyberstalking if
587 | each party has complied with the provisions of law; providing
588 | for venue of the cause of action; prohibiting the clerk of the
589 | court from assessing a filing fee; providing an exception;
590 | providing that a petitioner is not required to post a bond;
591 | requiring the clerks of court to assist petitioners in filing
592 | petitions with the court; requiring the clerk of the court in
593 | each county to make available informational brochures; providing
594 | a sample petition for an injunction for protection against
595 | stalking or cyberstalking; authorizing the court to grant a
596 | temporary injunction ex parte, pending a full hearing, under
597 | certain circumstances; authorizing the court to grant such
598 | relief as the court deems necessary and proper; providing
599 | procedures for an ex parte injunction hearing; setting forth the
600 | relief the court may grant if it finds that the petitioner is in
601 | imminent danger of becoming a victim of stalking or
602 | cyberstalking; setting forth the criteria the court must
603 | consider at the hearing; requiring the court to allow an
604 | advocate from a state attorney's office, law enforcement agency,
605 | or certified domestic violence center to be present with the
606 | petitioner or respondent during any court proceeding; requiring
607 | the clerk of the court to furnish a copy of the petition, notice

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Bill No. HB 1099 (2012)

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608 of hearing, and temporary injunction, if any, to the sheriff or
609 a law enforcement agency of the county where the respondent
610 resides or can be found, who shall serve it upon the respondent
611 as soon thereafter as possible on any day of the week and at any
612 time of the day or night; authorizing the court to order a law
613 enforcement officer to accompany the petitioner; authorizing the
614 court to enforce a violation of an injunction for protection
615 against stalking or cyberstalking through a civil or criminal
616 contempt proceeding; authorizing a state attorney to use
617 criminal procedures for a violation of an injunction for
618 protection; creating s. 784.0487, F.S.; providing procedures to
619 follow when the respondent has violated the injunction for
620 protection; providing legislative intent; providing criminal
621 penalties; providing that a court may award a person who suffers
622 an injury or loss as a result of a violation of an injunction
623 for protection against stalking or cyberstalking economic
624 damages for that injury or loss, including costs and attorney
625 fees for enforcement of the injunction; providing an effective
626 date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1187 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Perry offered the following:

Amendment (with title amendment)

6 Remove line 26 and insert:

7 circuit in which the alternative sentence is imposed. If there
8 is more than one child protection team in the judicial circuit
9 in which the alternative sentence is imposed, the assessment
10 shall be allocated evenly among them.

11 -----
12
13 **T I T L E A M E N D M E N T**

14 Remove lines 2-9 and insert:

15 An act relating to sentencing child abusers; amending
16 s. 921.187, F.S.; authorizing the court to order an
17 offender convicted of an offense of child abuse to pay
18 an assessment of a specified amount if the offender
19 does not receive a state prison sentence; specifying

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1187 (2012)

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20 | how the assessments are allocated to child protection
21 | teams; providing an

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1331 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative McBurney offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 817.535, Florida Statutes, is created to
8 read:

9 817.535 Fraudulent creation of interest in real or
10 personal property.-

11 (1) A person may not, with the intent to defraud or harass
12 another, file or cause to be filed for recording in the official
13 records a document relating to real or personal property which
14 the person knows to contain a material misstatement,
15 misrepresentation, or omission of fact. The filed document may
16 include, but is not limited to, a deed, lease, bill of sale,
17 agreement, mortgage, notice of claim of lien, notice of levy,
18 promissory note, mortgage note, or any other instrument that
19 relates to the ownership, transfer, or encumbrance of or claim

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Amendment No. 1

20 against real or personal property or any interest in real or
21 personal property.

22 (2) A person who violates subsection (1) commits the
23 offense of fraudulent creation of an interest in real or
24 personal property, a felony of the third degree, punishable as
25 provided in s. 775.082, s. 775.083, or s. 775.084.

26 (3) A person who records a claim of lien in the official
27 records pursuant to Chapter 713, Part I, shall be subject to the
28 fraud provisions of s. 713.31 and not this section.

29 Section 2. This act shall take effect October 1, 2012.

30
31
32 -----
33 **T I T L E A M E N D M E N T**

34 Remove the entire title and insert:

35 An act relating to property fraud; creating s. 817.535, F.S.;
36 prohibiting a person, with intent to defraud or harass another,
37 from filing or causing to be filed a document relating to the
38 ownership, transfer, or encumbrance of or claim against real or
39 personal property, or any interest in real or personal property,
40 which the person knows contains a material misstatement,
41 misrepresentation, or omission of fact; providing criminal
42 penalties; providing a person who records a claim of lien in the
43 official records pursuant to Chapter 713, Part I, be subject to
44 the fraud provisions of s. 713.31, F.S.; providing an effective
45 date.