

STORAGE NAME: h0143s1.hcc.doc

DATE: March 1, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS**

BILL #: CS/HB 143

RELATING TO: Career Criminals

SPONSOR(S): Council for Healthy Communities and Representative Bowen

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 1
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates a system and process for the registration of certain career offenders and authorizes community and public notification of certain registration information. A "career offender" is any person who is designated as a habitual felony offender, a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084, F.S., or as a prison releasee reoffender under s. 775.082(9), F.S.

This act takes effect July 1, 2002, contingent upon a specific appropriation in the 2002 General Appropriations Act to administer this act.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

The career offender registration and notification process created in this bill will increase responsibilities and obligations of the departments and agencies required to comply with the registration procedures.

This bill authorizes government to publicize the presence of a career criminal in a community. Some might consider this government interference with a career offender's privacy rights.

B. PRESENT SITUATION:

Repeat Offenders

In Section 775.0841, F.S., the Legislature finds that "priority should be given to the investigation, apprehension, and prosecution of career criminals in the use of law enforcement resources and to the incarceration of career criminals in the use of available prison space." Section 775.084, F.S., defines repeat offender terms as follows:

- "Habitual felony offender" means a defendant who may be sentenced to an extended prison term if previously convicted of two or more felonies or other qualified offenses, and who meets other criteria relating to the felony for which he or she is to be sentenced.
- "Habitual violent felony offender" means a defendant who may be sentenced to an extended prison term if previously convicted of a felony, or an attempt or conspiracy to commit a felony, and one of those convictions was for murder, sexual battery, robbery, or another enumerated offense, and the defendant meets other criteria relating to the felony for which sentenced is imposed.
- "Three-time violent felony offender" means a defendant who may be sentenced to a mandatory minimum prison term if previously convicted as an adult two or more times of a felony, or an attempt or conspiracy to commit a felony, and two or more of those convictions were for murder, sexual battery, robbery or another enumerated offense, and the defendant meets other criteria relating to the felony for which sentencing is imposed.
- "Violent career criminal" means a defendant who will be sentenced to a prison term if previously convicted as an adult three or more times for an offense of aggravated child abuse, aggravated abuse of the elderly or disabled, escape, or another enumerated offense, and the defendant meets other criteria relating to the primary felony for which sentencing is imposed.

Convicted Felon Registration

Pursuant to Section 775.13, F.S., any person who has been convicted of a felony is required, within 48 hours of entering a county, to register with the sheriff of said county and be fingerprinted and photographed. This registration requires that the person provide identification information, list the crime for which convicted, place of conviction, and any sentence imposed. In lieu of registering with the sheriff, the person may register with the Department of Law Enforcement.

Sexual predators registered under s. 775.21, F.S., and sexual offenders registered under ss. 943.0435 or 944.607, F.S., are exempt from registration as a convicted felon. This section also provides other exemptions which include, but are not limited to, offenders who have had their civil rights restored and offenders who have received a full pardon for the offense for which convicted. Failure to register as a convicted felon as provided in s. 775.13, F.S., is a second degree misdemeanor punishable by up to 60 days imprisonment or a \$500 fine.

Sexual Predator Registration

Florida's Sexual Predator Act is established in Section 775.21, F.S., and provides that an offender shall be designated as a sexual predator for certain statutorily designated sexual offenses. The sexual predator designation is made by the court sentencing the offender for an offense applicable to the sexual predator designation. This law provides legislative findings and intent regarding the necessity for sexual predator registration and community and public notification regarding sexual predators.

Section 775.21(6) F.S., specifies the type of information that must be provided by the predator in each instance of registration, and how it is to be collected, transmitted, maintained, and disseminated by the agencies responsible for implementing the law. Information includes, but is not limited to, the predator's name, social security number, certain physical characteristics, photograph, residence address, employment information, and fingerprints.

Registration by DOC: If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with DOC and provide certain information.¹

Registration by FDLE or sheriff: If the sexual predator is not in the custody or control of, or under the supervision of, DOC, or is not in the custody of a private correctional facility, and the predator resides in this state, the predator must initially register in person at an office of the Florida Department of Law Enforcement (FDLE), or at the sheriff's office in the county in which the predator resides, and must provide certain information. Registration procedures are also provided for sexual predators in the custody of a local jail or under federal supervision.

Registration by DHSMV: Within 48 hours after initial registration, a sexual predator who is not incarcerated and resides in the community, including those under DOC supervision, must register in person at a driver's license facility of the Department of Highway Safety and Motor Vehicles (DHSMV). At the driver's license facility, the sexual predator is required to provide certain information and to secure or renew a Florida driver's license or state identification card. When subject to license renewal, and within 48 hours after any residence address or name change, the predator must report in person to a driver's license office to present registration information.²

¹ s. 775.21(6)(b), F.S.

² s. 775.21(6)(f) and (g), F.S.

Out-of-state residence: A sexual predator who plans to establish residency in another state must report in person to the sheriff of the county of current residence or FDLE within 48 hours before date of departure to provide intended residence information. Failure to provide this information is a third degree felony pursuant to s. 775.21(6)(i), F.S.

FDLE responsibilities and dissemination of information: FDLE is responsible for the on-line maintenance of current information regarding sexual predators and must maintain hotline access for state, local, and federal law enforcement agencies to obtain information. FDLE's sexual predator list is a public record and the department is required to adopt guidelines as necessary for the registration of sexual predators and dissemination of predator information.³

Duration and removal of sexual predator designation: A designated sexual predator must maintain registration with FDLE for the duration of the predator's life, unless a full pardon has been granted, or a conviction has been set aside for any felony offense meeting the criteria for the sexual predator designation. However, the law provides a mechanism for the sexual predator to petition for removal of the sexual predator designation after a certain period has elapsed, if the petitioner has had no arrests during that period and the court is otherwise satisfied the petitioner is not a current or potential threat to public safety.

Community and public notification: Law enforcement agencies must inform members of the community and the public of a sexual predator's presence as set forth in s. 775.21(7), F.S.

Verification: FDLE and DOC are required to verify the addresses of sexual predators, and that verification must be consistent with federal sexual predator laws.

Immunity: The law contains a provision immunizing certain agencies and persons from civil liability for damages for good-faith compliance with registration and notification requirements.

Penalties: Penalties are provided for the sexual predator's failure to comply with the registration requirements and for misuse of public records information regarding sexual predators.

Sexual Offender Registration

Registration requirements and other provisions relevant to certain sexual offenders (those not designated sexual predators) are provided in ss. 943.0435 and 944.607, F.S. Many of the requirements and provisions in these sections are similar, if not identical, to those provided for sexual predators under s. 775.21, F.S.

Community and public notification procedures and requirements for sexual offenders are provided by ss. 943.043 and 943.0435, F.S. Section 944.606, F.S., requires DOC to provide information to law enforcement agencies regarding any sexual offender who is being released from incarceration, and must notify FDLE if a sexual offender escapes, absconds, or dies.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 143 creates a process and system for the registration of "career offenders" and authorizes community and public notification. Similar to the current system used for sexual predator/sexual offender registration, the implementation of the career offenders registration system is the responsibility of FDLE, the sheriffs, the DOC and private correctional facilities, and the DHSMV.

³ s. 775.21(6)(k), F.S.

Section 1:

This section amends s. 775.13, F.S., to provide that career offenders registered as required in s. 775.261 or s. 944.609, F.S., are exempt from convicted felon registration.

Section 2:

This section of the council substitute creates s. 775.26, F.S., providing legislative intent. The Legislature finds that career offenders, by virtue of their histories of offenses, present a threat to the public and communities. The Legislature further finds that this registration is a status, not a punishment, and community and public notification of certain registration information aids the public and communities in avoiding victimization. The Legislature intends to require career offender registration and authorize public and community notification by law enforcement.

Section 3:

The council substitute creates s. 775.261, F.S., to establish the "Florida Career Offender Registration Act." This section provides definitions for the implementation of the act and defines a "career offender" as any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084, or as a prison releasee reoffender under s. 775.082(9), F.S.

Career offenders released on or after January 1, 2003, from a state-imposed sanction for one of the repeat offender designations (previously described) must register with FDLE or the sheriff's office in the county of residence within 2 working days after establishing residence or within 2 working days after being released from the custody, control, or supervision of DOC or from the custody of a private correctional facility.

A person is not a career offender if the person has received a pardon, or a conviction has been set aside for a felony or other qualified offense necessary for designation as a career offender. Career offender registration does not apply to a person registered as a sexual predator or sexual offender, however, if the person is no longer required to register as a sexual predator or sexual offender, that person must register as a career offender, if so qualified under the provisions of the bill. Also, a person subject to registration as a career offender is not subject to registration as a convicted felon under s. 775.13, F.S., but if the person is no longer required to register as a career offender, that person must register as a convicted felon, if qualified as such.

Within 2 working days of initial registration, a career offender who is not incarcerated and who resides in the community, including a career offender under DOC supervision, must register in person at a driver's license office of DHSMV. The career offender must present proof of career offender registration and secure or renew a driver's license or state identification card, and must provide residence address and other information. When subject to license renewal, and within 2 working days after any residence address or any name change, the predator must report in person to a driver's license office to be photographed and to present registration information.

The DHSMV must forward to FDLE and DOC all photographs and information provided to it by the career offender. DHSMV is authorized to release a reproduction of the color-photograph or digital-image license to FDLE for purposes of public notification.

If a career offender registers with an office of FDLE, FDLE must notify the sheriff of the county, and, if applicable, the police chief of the municipality where the career offender resides within 48 hours after the registration.

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A career offender who intends to establish residency in another state or jurisdiction must report in person to the sheriff of the county of current residence, or FDLE within 2 working days before the date of departure, and must provide address, municipality, county, and state of intended residence. The sheriff must promptly provide this information to FDLE. If under the supervision of DOC, a career offender must notify the supervising probation officer of his or her intent to transfer supervision and must satisfy all transfer requirements pursuant to the Interstate Compact for Supervision of Adult Offenders, as provided in s. 949.07, F.S. Failure by the career offender to report and provide this information is a third degree felony.

An offender who indicated his or her intent to reside in another state but later decides to remain in Florida must report, in person, his or her intent to remain in Florida to the agency to which the intended change of residence was reported, and such report must be made within 2 working days after the date upon which the offender indicated he or she would leave the state. Failure to report and provide this information is a second degree felony.

FDLE is required to maintain on-line computer access to current information regarding registered career offenders, and must maintain hotline access for state, local and federal law enforcement agencies to obtain information for purposes of monitoring, tracking, and prosecution. FDLE's career offender registration list contains certain identification and address information, and is a public record. FDLE may disseminate this information by any means deemed appropriate, but must advise the person inquiring about such information that positive identification of a person believed to be a career offender cannot be established without a fingerprint comparison and that it is illegal to misuse public information regarding a registered career offender to facilitate the commission of a crime. FDLE is required to adopt guidelines as necessary for registration of career offenders and dissemination of registration information.

A designated career offender must maintain registration for the duration of his or her life, unless a full pardon has been granted, or a conviction has been set aside in a postconviction proceeding for any offense meeting the criteria for classifying the person as a career offender for the purpose of registration. A person may petition the court for removal of the registration requirement after he or she has been released from confinement, supervision, or sanction for at least 20 years, if the petitioner has had no arrests during that period and the court is otherwise satisfied the petitioner is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition and may oppose such petition. If a court denies a petition, the court may set a date at which the registered career offender may again petition the court for relief. Upon presentation of a certified copy of a court order that indicates a person is no longer required to comply with the career offender registration requirements, FDLE will remove the person from classification as a career offender for purposes of registration.

Law enforcement agencies are authorized to inform members of the community and the public of a career offender's presence in the community. The sheriff of the county or the chief of police of the municipality where the career offender resides may provide notification in any manner deemed appropriate and these notification efforts may be coordinated with FDLE. As deemed appropriate by FDLE and local law enforcement, statewide notification to the public is authorized.

FDLE and DOC are required to verify the addresses of career offenders. Sheriffs are required to annually verify the addresses of career offenders who are not under the care, custody, control, or supervision of DOC, and must provide the address information to FDLE in an electronic format. Address verification information must include the verifying person's name and contact information, the date and method of verification, and must specify if the address was verified as correct, incorrect, or unconfirmed.

CS/HB 143 contains provisions immunizing the following from civil liability for damages for good-faith compliance with registration and notification requirements: FDLE, DOC, DHSMV, any law enforcement agency in Florida, and personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or individual or entity acting at the request or direction of any law enforcement agency.

A third degree felony penalty is provided for any career offender who: fails to register; fails to maintain, acquire, or renew a driver's license or state identification card after registration; fails to provide required location or name-change information; or fails, by act or omission, to comply with the registration requirements. A person who misuses public records information concerning a career offender commits a first degree misdemeanor.

Section 4:

This section of the council substitute creates s. 944.608, F.S., and defines a "career offender" as a person who is in the custody or control of, or under the supervision of, DOC or a private correctional facility and who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison releasee reoffender under s. 775.082(9).

The clerk of the court must ensure that career offenders who are not sentenced to incarceration are fingerprinted and those fingerprints are forwarded to FDLE within 48 hours after the offender is sentenced.

Career offenders under the supervision of DOC but not incarcerated must register with DOC and provide specified information as provided in s. 775.261, F.S., unless he or she is required to register as a sexual predator or sexual offender. DOC is required to verify the address information.

DOC must provide certain information to FDLE, including contact information for the DOC office supervising the career offender, as well as a digitized photograph of the offender. Information provided to FDLE must be made available electronically as soon as the information is in DOC's database and must be in a specific format. The DOC must notify FDLE of any changes in a career offender's information, and notification is required if the offender escapes, absconds, or dies while in its custody or control, or under its supervision.

A career offender under the supervision of DOC but not incarcerated must register with DHSMV as provided in s. 775.261(4)(c), F.S., unless the career offender is a sexual predator or a sexual offender, then he or she shall register as required under s. 775.21 or s. 944.607, F.S. A career offender who fails to comply with the requirements of s. 775.261(4), F.S. commits a third degree felony.

CS/HB 143 provides that DOC, DHSMV, FDLE, personnel of those departments and any individual or entity acting at the request or direction of those departments are immune from civil liability from damages for good faith compliance with this section.

Section 5:

This section of CS/HB 143 creates s. 944.609, F.S., and defines a "career offender" as a person who is in the custody or control of, or under the supervision of, DOC or a private correctional facility and who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison releasee reoffender under s. 775.082(9). This section provides legislative intent and findings regarding career offender registration and public notification about the presence of these offenders.

This section requires the DOC to provide specific information regarding career offenders who are released after being incarcerated for any offense. This information may include the offender's name and

descriptive information, the correctional facility that released the offender, the date and county of sentence and each crime for which the offender was sentenced, the offender's fingerprints, and a digitized photograph taken within 60 days prior to release. DOC may also provide other information deemed necessary, including criminal and corrections records and nonprivileged personnel and treatment records.

DOC must provide the registration information to the following: the sheriff of the county where the career offender was sentenced; the sheriff of the county where the career offender plans to reside (and chief of police of municipality, if applicable); the FDLE; the victim of the offense or their representative; and any person who requests the information. This information must be provided to the requestor within 6 months prior to the anticipated release of a career offender. Information provided to FDLE must be available electronically as soon as the information is available and must be in a format compatible with the Florida Crime Information Center.

After receiving career offender information from DOC, the FDLE, the sheriff, or the chief of police must provide the information to any individual who requests it and may release the information to the public unless the information is confidential or exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the Florida Constitution. The DOC or any law enforcement agency is authorized to notify the public and the community of a career offender's presence in the community. If a career offender qualifies as a sexual predator under s. 775.21, F.S., FDLE or any other law enforcement agency must perform community and public notification as provided in the Florida Sexual Predators Act.

Persons given immunity from civil liability for damages resulting from good faith compliance with this section are: elected or appointed officials; public employees; school administrators or employees; agencies; or any individuals or entities acting at the request or upon the direction of any law enforcement agency.

This act takes effect July 1, 2002, contingent upon a specific appropriation in the 2002 General Appropriations Act to administer this act.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

FDLE estimates a cost of \$582,234 for contractual programming services to design, implement, and maintain the career offender registration system, additional hardware and software, and 5 FTE to administer the career offender registration system as provided in the council substitute. FDLE estimates annual recurring costs of \$370,134. Also reflected in these estimates is the cost for installation and maintenance of a toll-free phone line for public information. DHSMV reports that the provisions of this council substitute, if enacted, would require contracted programming modifications to the driver license software systems at an estimated cost of \$172,800.

DOC reported as of 8/31/01, there were 233 career criminals (as defined in the amendment) in the supervised population. Although complying with the registration requirements will impact the workload of Correctional Probation Specialists, DOC reported that the fiscal impact will be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The provisions of this bill will have an indeterminate fiscal impact on sheriffs who must comply with the registration and notification requirements of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The career offender registration and notification created by this bill is similar to the registration and notification system currently used for sexual predators, therefore cases relating to sexual predator registration and notification may be relevant.

Sexual predator registration and notification laws have been found not to encroach on constitutional privacy interests, *Johnson v. State*, 2000 WL 1760181 (Fla. 5th DCA 2000); not to violate state constitutional due process rights, *id.*; and not to constitute double jeopardy, *Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998).

The sexual predator registration and notification laws have been found to be unconstitutionally overinclusive as applied to a person designated as a sexual predator under those laws for an

offense the court found was not sexual in nature. *Robinson v. State*, 2001 WL 1359204 (Fla. 4th DCA 2001). The Fourth District Court of Appeal has certified to the Florida Supreme Court the question of whether those laws violate equal protection as to defendants convicted of false imprisonment where it is undisputed that the offense was committed without any sexual motivation. *Raines v. State*, 26 Fla. L. Weekly D2921a (Fla. 4th DCA December 12, 2001).

Retroactive application of the sexual predator registration and notification laws has been found not to constitute an ex post facto violation. See *Mendez v. State*, 2001 WL 314524*2 (Fla. 5th DCA 2001) (“[D]esignation as a sexual predator is ‘neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.’ *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997). Therefore, no ex post facto concerns exist that would prohibit applying the current statute to Mendez. *Rickman v. State*, 714 So.2d 538 (Fla. 5th DCA 1998); *Doe v. Portiz*, 142 N.J. 1, 662 A.2d 367 (N.J. 1995).”)

B. **RULE-MAKING AUTHORITY:**

None.

C. **OTHER COMMENTS:**

None.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

Committee on Crime Prevention, Corrections and Safety. On January 24, 2002, the committee adopted a traveling strike-everything amendment. The amendment substantially changes the career offender registration system as provided in the original bill. The original bill provides for a “career criminal” registration system. As referenced in s. 775.0841, F.S., “career criminal” is a commonly known term used to describe repeat and violent felony offenders who are subject to increased efforts by law enforcement agencies and prosecutors to investigate, apprehend, prosecute and incarcerate for extended terms. In order to avoid potential confusion with the term “career criminal” as referenced in Chapter 775, F.S., the strike everything amendment creates a “career offender” registration system. The amendment establishes a system and process for the registration of career offenders and authorizes community and public notification of career offender registration information. This career offender registration system is similar, but not identical, to the current registration system used for sexual predators and sexual offenders.

Fiscal Policy & Resources. On February 22, 2002, the committee adopted two amendments to the traveling strike-all. The first provided for an effective date contingent on a specific appropriation in the 2002 General Appropriation Act; the second made technical changes to the timeframe that career criminals had to register with the proper law enforcement authority.

Council for Healthy Communities. On March 1, 2002, the council adopted HB 143 as a council substitute. The council substitute incorporated the three amendments that were traveling with the bill. The council substitute also conforms the bill to the Senate companion by requiring FDLE and DOC to establish a system for verifying the addresses of certain career offenders.

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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