

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SBs 90 and 554

SPONSOR: Committees on Judiciary and Criminal Justice and Senators Laurent and Burt

SUBJECT: Career Offender Registration

DATE: February 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for CS/SBs 90 and 554 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 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 Committee Substitute creates ss. 775.26, 775.261, 944.608, and 944.609, F.S.

II. Present Situation:

Florida’s Sexual Predator Act, s. 775.21, F.S., provides that an offender shall be designated as a sexual predator for certain statutorily designated sexual offenses. The court sentencing the offender for an offense applicable to the sexual predator designation, makes the sexual predator designation. The law contains legislative findings and intent regarding the necessity for sexual predator registration and community and public notification of certain information regarding sexual predators.

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. Registration procedures are also provided for sexual predators under federal supervision and in the custody of a local jail. The law specifies what information is to be provided during registration and how it is to be collected, transmitted, maintained, and disseminated by the agencies responsible for implementing the law.

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 provide certain information. After this initial registration, the sexual predator must register 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 a Florida driver's license or license renewal, or in lieu of that, secure a state identification card. If the driver's license or identification card is subject to renewal, or the predator's residence address or name changes, the predator is required to report in person to the driver's license facility. The non-incarcerated sexual predator under DOC supervision who resides in the community, after initial registration with DOC, is subject to registration requirements similar to the predator who is no longer in the custody or control of, or under the supervision of, DOC, or is not in the custody of a private correctional facility.

The law specifies the type of information that must be provided in each instance of registration and the manner of providing this registration information. Information includes, but is not limited to, the predator's name, social security number, certain physical characteristics, and residence address. A digitized photograph is taken. Fingerprints may be taken.

Extensive procedures are set forth in the law for providing notification to the public and communities about certain information relating to sexual predators, much of which is compiled during this registration process. The FDLE is also required to maintain registration information and provide community and public notification of such information in the manner specified in ss. 775.21 and 943.03, F.S. The FDLE is also required to adopt guidelines as necessary for registration of sexual predators and dissemination of information regarding sexual predators. The law also requires address verification by FDLE or DOC, as applicable. This requirement is consistent with federal law relating to sexual predators.

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

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 that meets 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.

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.

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

Community and public notification procedures and requirements are governed by ss. 943.043 and 943.0435, F.S.

Section 944.606, F.S., requires that DOC provide certain information to FDLE and others regarding any sexual offender being released from incarceration.

III. Effect of Proposed Changes:

The Committee Substitute for CS/SBs 90 and 554 creates a system and process for the registration of certain career offenders and authorizes community and public notification of certain registration information. The Committee Substitute utilizes a registration system that is similar to that utilized for registration of sexual predators and sexual offenders. The most notable similarity is that FDLE, the Sheriffs, DOC and private correctional facilities, and DHSMV serve as the agencies responsible for implementing the system, and FDLE serves as the hub and central repository for registration information.

The Committee Substitute creates s. 775.26, F.S. This section provides legislative findings and 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 registration of career offenders is intended to aid law enforcement agencies in timely apprehending career offenders; that registration is a status, not a punishment; and that community and public notification of certain registration information aids the public and communities in avoiding being victimized by career offenders. The Legislature intends to require such registration and authorize such notification.

The Committee Substitute also creates s. 775.261, F.S. This section requires registration of a career offender and authorizes community and public notification of certain registration information. A "career offender" is 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, F.S., or as a prison releasee reoffender under s. 775.082(9), F.S. 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.

This section does not apply to a person who has been designated as a sexual predator or sexual offender and who is required to register as such, but if the person is no longer required to register as a sexual predator or sexual offender he or she must register as a career offender, if designated as provided in this section. A person subject to career offender registration is not required to register as a convicted felon, but if the person is no longer required to register as a career offender under this section, he or she must register as a convicted felon, if so qualified.

A career offender released on or after January 1, 2003, from a sanction imposed in this state for one of the repeat offender designations previously described must register with FDLE or the sheriff's office in the county where the career offender resides by providing certain information within 48 hours after establishing residence or within 48 hours after being released from the custody, control, or supervision of DOC or from the custody of a private correctional facility. This registration information, includes, but is not limited to, the career offender's name, social security number, age, race, gender, date of birth, height, weight, hair and eye color, photograph,

and residence address. If the career offender registers with the sheriff, the sheriff must take a photograph and a set of fingerprints and forward them to FDLE with the registration information. If the career offender registers with FDLE, FDLE must notify the sheriff and, if applicable, the police chief of the municipality, where the career offender resides within 48 hours after that registration.

Within 48 hours after this initial registration, a career offender who is not incarcerated and who resides in the community, including a registered career offender under DOC supervision, must register in person at a driver's license office of DHSMV. There, the career offender must present proof of career offender registration and secure a driver's license or state identification card and provide residence address and other information, as statutorily specified. Each time this card is subject to renewal, and within 48 hours after any change in the residence address or any name change, the career offender must personally report to a driver's license office and be photographed and provide the registration information previously described.

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

A career offender who intends to establish residence in another state or jurisdiction other than this state, must report in person to the sheriff of the county of current residence or FDLE within 48 hours before the date of departure and provide address, municipality, county, and state of intended residence. The sheriff must promptly provide this information to FDLE. If the career offender fails to report and provide this information as required, he or she commits a third degree felony.

A career offender who indicates his or her intent to reside in another state or a jurisdiction other than Florida and later decides to remain in this state must, within 48 hours after the date of indicated departure, report in person to the sheriff or FDLE, whichever is the agency to which the career offender reported his or her intended departure, and provide notification of his or her intent to remain in this state. If the sheriff is notified, the sheriff must promptly notify FDLE. If the career offender fails to report and provide this information as required, he or she commits a second degree felony.

The FDLE is required to maintain on-line computer access to current information regarding each registered career offender, and must maintain hotline access so that state, local, and federal law enforcement agencies may obtain instantaneous locator file and criminal characteristics information on all released and career offenders for purposes of monitoring, tracking, and prosecution. Photographs and fingerprints need not be stored in a computerized format.

The FDLE's career offender registration list, which contains certain identification and address information, is a public record, and the department 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 career offender to facilitate the commission of a crime.

The FDLE is required to adopt guidelines as necessary for registration of career offenders and dissemination of registration information. The FDLE and the DOC are also required to implement a system for verifying the addresses of career offenders. The sheriff of each county is required to annually verify the addresses of career offenders who are not under the care, custody, control, or supervision of the DOC. The sheriff is required to promptly provide the address verification information to the FDLE in an electronic format. The address verification information must include the verifying person's name, agency, phone number, the date of verification, the method of verification, and whether the address information was verified as correct, incorrect, or unconfirmed.

A career offender must maintain registration for the duration of his or her life, unless the career offender receives a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a career offender for the purpose of registration. However, a registered career offender who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which he or she resides for the purpose of removing the registration requirement. The court may grant the petition if the registered career offender demonstrates the absence of an arrest history previously described and the court is otherwise satisfied that the career offender is not a current or potential threat to public safety. The Committee Substitute directs that the state attorney must be provided notice of the removal petition and the state attorney may oppose the granting of the petition. As provided, if the court denies the petition, it may set a future date in which the registered career offender may again petition for relief. The Committee Substitute directs FDLE to remove the registration requirement when presented by the registered career offender with a certified copy of a court's written findings or order indicating that the court has granted the removal petition.

Law enforcement agencies are authorized to inform the community and the public of the presence of a career offender in the community. The sheriff of the county or the chief of police of the municipality where the career offender resides may provide such notification in any manner deemed appropriate. Such notification efforts may be coordinated with FDLE. Statewide notification is authorized, as deemed appropriate by law enforcement personnel and FDLE.

The FDLE, DHSMV, DOC, any law enforcement agency in this state, and personnel of those departments; elected or appointed officials, public employees, or school administrators; or employees, agencies, or individuals or entities acting at the request of or upon the direction of any law enforcement agency are immune from civil liability for damages for good-faith compliance with the requirements of this section.

A career offender who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or state identification card; who fails to provide required location information or change-of-name information; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a third degree felony. This violator may be prosecuted in the county in which the act or omission was committed, the county of the last registered address of the career offender, the county in which the conviction occurred for the offense or offenses that meet the criteria for the career offender designation, or in the county in which the person was so designated.

A person who misuses public records information concerning a career offender to secure a payment from the career offender; who knowingly distributes or publishes false information concerning a career offender, which is misrepresented as being public records information; or who materially alters public records information with the intent to misrepresent that information commits a first degree misdemeanor.

The Committee Substitute also creates s. 944.608, F.S. This section 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, F.S., or as a prison releasee reoffender under s. 775.082(9), F.S.

If a career offender is not sentenced to a term of imprisonment, the clerk of the court is required to ensure that this person’s fingerprints are taken and forwarded to FDLE within 48 hours after the court sentences this person.

A non-incarcerated career offender under DOC supervision must register with DOC and provide specified information and must also register and provide information in the manner provided in s. 775.261(4)(c), F.S., unless he or she is required to register as a sexual predator or sexual offender. The DOC must verify address information. This career offender is subject to the third degree felony penalty provided in s. 775.261, F.S., for failing to comply with that section, and to the third degree felony penalty in s. 944.608, F.S., for failing to submit to the taking of a digitized photograph or otherwise failing to comply with the requirements of that section.

In addition to notification and transmittal requirements imposed by any other provision of law, DOC must provide to FDLE a career offender’s residence address, legal status, the location and phone number of the DOC office supervising the career offender, and a digitized photograph of the career 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 format compatible with the requirements of the Florida Crime Information Center (FCIC).

The DOC must notify FDLE if the career offender escapes, absconds, or dies while in its custody or control, or under its supervision.

If any information DOC provides to FDLE regarding a career offender changes during the time the career offender is in its custody or control, or under its supervision, DOC must timely update the information and provide it to FDLE in the manner previously described for transmittal of such information.

The DOC, DHSMV, FDLE, the personnel of those departments, and any individual or entity acting at the request or upon the direction of those departments are immune from civil liability for damages for good-faith compliance with this section.

The Committee Substitute also creates s. 944.609, F.S. This section provides the same definition of “career offender” as provided in s. 944.608, F.S. It also provides legislative findings and intent identical to s. 775.261, F.S.

The DOC is required to provide certain information regarding a career offender who is being released after serving a period of incarceration for any offense. The information includes, but is not limited to, the person's name, physical characteristics, date of release, intended residence (if known), fingerprints, and a digitized photograph taken within 60 days before release. The DOC is also authorized to provide other information on the career offender that it deems necessary. This information is to be provided to the sheriffs of the county where the career offender was sentenced and where he or she resides; if applicable, the chief of police of the municipality where the career offender resides; FDLE; upon request, the victim of the offense, the victim's parent or legal guardian, the lawful representative of the victim or the victim's parent or legal guardian, and the victim's next of kin (if the victim is a homicide victim); and, upon request, any other person.

The information must be provided within 6 months prior to the anticipated release of the career offender or as soon as possible, if he or she is released earlier than anticipated, and the information provided to FDLE must be available electronically as soon as the information is available and in a format that is compatible with the requirements of the FCIC.

Upon receiving this information, FDLE, the sheriff, or the chief of police must provide this information to any person who requests such information.

The DOC or any law enforcement agency is authorized to notify the community and public of a career offender's presence in the community.

Elected or appointed officials, public employees, school administrators or employees, agencies, or any persons acting at the request or upon the direction of any law enforcement agency are immune from civil liability for damages for release of information under this section.

The act takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Cases relating to sexual predator registration and notification may be relevant to the career offender registration and notification system and process that the Committee Substitute would create.

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*, 798 So.2d 749 (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). Thus, 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).”)

Sexual predator registration and notification laws have also been found not to encroach on constitutional privacy interests, *Johnson v. State*, 795 So.2d 82 (Fla. 5th DCA 2001); 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).

However, 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). This issue should have no bearing on the Committee Substitute, because the career offender designation is based upon the person’s designation under one or another of the various repeat offender categories specified in the Committee Substitute.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

FDLE estimates a start-up cost of \$235,504 for 5 FTE and \$511,303 to design, implement, and maintain the career offender registration system, for a total of \$746,807 for FY 2002-03. FDLE estimates recurring costs of \$462,278 for FY 2003-04 and further estimates those costs will remain at \$462,278 for FY 2004-05. Included in these estimates

is the cost for installation and maintenance of a toll-free phone line for public information.

DHSMV reports the bill would require contracted programming modifications to the driver license software systems at an estimated cost of \$172,800.

DOC indicates that, as of 08/31/01, there were 233 people in the supervised population who would qualify as career offenders under the bill's terms. Although complying with the registration requirements will impact the workload of correctional probation specialists, DOC reports that the impact will be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.