

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will likely increase the number of offenders eligible for sexual predator designation and will require electronic monitoring of certain offenders on supervision.

Promote personal responsibility: The bill will require electronic monitoring of certain offenders.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator Registration: Section 775.21, F.S. provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. kidnapping or false imprisonment¹ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;²
 - c. lewd or lascivious offenses;³
 - d. selling or buying a minors for child pornography;⁴ or
 - e. a violation of a similar law of another jurisdiction;
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
 - a. kidnapping, false imprisonment or luring or enticing a child⁵ where the victim is a minor and the defendant is not the victim's parent,
 - b. sexual battery;⁶
 - c. procuring a person under the age of 18 for prostitution⁷
 - d. lewd or lascivious offenses;
 - e. lewd or lascivious battery on an elderly person;⁸
 - f. promoting sexual performance by a child;⁹
 - g. selling or buying a minors for child pornography; or
 - h. a violation of a similar law of another jurisdiction;¹⁰

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the prior felony was committed more than 10 years before the primary offense, it is not considered a prior felony under this provision if the offender has not been convicted of any other crime

¹ s. 787.01, F.S. or s. 787.02, F.S.,

² See chapter 794, F.S.

³ s. 800.04, F.S.

⁴ s. 847.0145, F.S.

⁵ s. 787.025, F.S.

⁶ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

⁷ s. 796.03, F.S.

⁸ s. 825.1025(2)(b), F.S.

⁹ s. 827.071, F.S.

¹⁰ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

for a period of 10 consecutive years from the most recent date of release from confinement, supervision or sanction, whichever is later. This bill removes the language requiring that the prior felony has to have been sentenced separately from the most recent offense. Further, the bill removes language disqualifying a prior felony if it was committed more than 10 years before the primary offense.

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 the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an FDLE office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. The law directs how information collected by the DOC, the DHSMV, and others, is to be provided to FDLE. Extensive procedures are also provided for verification of sexual predator's addresses. See ss. 775.21, 943.043, 943.0435, 944.606, and 944.607, F.S.

A sexual predator's failure to comply with registration requirements is a third degree felony. s. 775.21, F.S. A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.¹¹

A sexual predator is required to maintain registration for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding. A sexual predator who was designated as a sexual predator by a court before October 1, 1998 and who has been released from confinement or supervision for at least 10 years and has not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit where the sexual predator resides for removal of the sexual predator designation. For a person who was designated a sexual predator on or after October 1, 1998, a 20 year waiting period applies. This bill applies a 30 year waiting period for a person who was designated a sexual predator by a court on or after October 1, 2005.

Sexual offender. According to s. 943.0435, F.S., a "sexual offender" is a person who has been convicted of a specified sexual offense and who has been released on or after October 1, 1997 from the sanction imposed for any conviction of a specified offense. A sexual offender is required to report

¹¹ S. 775.21(10)(b), F.S.

and register in a manner similar to the registration of a sexual predator under s. 775.21, F.S. There are also somewhat similar registration requirements for sexual offenders under the custody or control of the DOC, or under its supervision, or in custody of a private correctional facility. s. 944.607, F.S. Failure of a sexual offender (under s. 943.0435, F.S., or s. 944.607, F.S.) to comply with the registration requirements is a third degree felony.

Harboring a sexual predator or sexual offender: The bill creates a third degree felony for any person who permits a sexual predator or sexual offender to reside with that person knowing that the sexual predator or sexual offender has failed to comply with the reporting requirements.

Electronic monitoring: The Department of Corrections uses three different types of electronic monitoring of offenders on supervision. The primary differentiation between electronic monitoring approaches is whether it uses radio frequency technology or GPS technology. GPS-based electronic monitoring is further divided into active GPS monitoring and passive GPS monitoring. All varieties of electronic monitoring require the offender to wear an electronic device on his or her body.¹²

Radio frequency monitoring essentially provides a curfew check to verify whether an offender is within an area to which he or she has been restricted. Most commonly, RF monitoring is used to determine whether an offender on house arrest is in the home. The offender must wear a small transmitter, which can weigh as little as an ounce, that transmits a radio signal to a small receiving unit. The broadcast range of the transmitter is typically about 150 feet, but many systems allow the range to be adjusted depending upon individual circumstances. The receiving unit is linked to a telephone line. If the receiving unit does not receive the radio signal from the transmitter, it causes a telephone alert to be sent to the monitoring station. In turn, the monitoring station notifies the probation officer that the signal has been lost and the offender may have left the restricted area.

RF monitoring systems can be programmed to account for periods when the offender is permitted to be away from the restricted area, such as to go to work or to attend religious services. However, RF monitoring does not provide any information about the offender's location when the offender moves outside the range at which the receiver can detect the radio transmission.

The cost for this form of RF monitoring is approximately \$2.75 per day, the least expensive of all forms of electronic monitoring.

Passive GPS monitoring systems require the monitored offender to wear a small radio transmitter on his or her body and to wear or carry a device that includes a radio receiver, a GPS receiver, and a storage unit. The transmitter and receiver combination ensures that the offender remains close to the GPS receiver. As is the case with RF monitoring systems, the transmitter is attached to the offender with a bracelet that has some type of tamper-resistant and/or tamper-alert technology.

Unlike RF monitoring, a passive GPS system is not restricted in range to a base location. It detects the offender's movements as he or she moves about. The device can record that the offender left an area and can pinpoint the offender's location during the day. Because the defendant's location can be accurately determined, the system parameters can be set to determine that the offender entered an area from which he or she is legally excluded, such as when a sex offender goes within 1000 feet of a school. The system is referred to as passive because it records the information for later examination by the probation officer. At the end of a specified interval, normally daily, the offender must download the information from the GPS receiver to another device. Depending on the sophistication of the system, the information can either be sent to the monitoring station by telephone or stored for future retrieval. When the data is compared against a set of known locations, such as a map with GPS coordinates, an analyst can determine where the offender was at any particular time.

¹² Information regarding DOC's use of electronic monitoring was obtained from a interim report of the Senate Criminal Justice Committee (2005-126) released in November 2004 entitled, Global Positioning System (GPS) Technology Use in Monitoring the Activities of Probationers.

Passive GPS monitoring is relatively inexpensive at approximately \$4 per day.

Active GPS monitoring uses the same basic technology as passive GPS monitoring, but provides near real-time reporting of the offender's location. Active GPS monitoring incorporates a cell phone into the equipment in order to transmit the offender's location coordinates to a monitoring station. The system is designed to provide an alert to the probation officer when the offender either leaves an area to which he or she is restricted or enters an area from which he or she is barred. Because of the additional expense for cell phone service and 24-hour monitoring, active GPS monitoring systems cost approximately \$9 per day.

For either type of GPS monitoring system, the department or its contractor maintains an archive of the GPS data points (locations) of offenders on either type of GPS monitoring. Therefore, a law enforcement agency can request a search of the database to determine whether a monitored offender was in the area when a crime was committed.

According to statistics from the Department of Corrections, in January 2005, the following number offenders on supervision were electronically monitored¹³:

| | Sex Offenders | Other | Total |
|-----------------|----------------------|--------------|--------------|
| Radio Frequency | 27 | 158 | 185 |
| Passive GPS | 13 | 10 | 23 |
| Active GPS | 224 | 275 | 499 |
| Total | 264 | 443 | 707 |

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.¹⁴ The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections. The Department of Corrections supervises the offender while on conditional release. There is a list of required conditions of release set forth in the section. For a releasee whose sexual offense was committed on or after October 1, 1997, the commission is statutorily authorized to order electronic monitoring.¹⁵ This bill requires that the court order electronic monitoring for a releasee whose crime was committed on or after July 1, 2005 where the releasee committed a specified sexual offense¹⁶ or was designated a sexual predator. The bill also creates s. 947.1406, F.S. to provide that for any conditional releasee placed on electronic monitoring pursuant to the newly created provision, the department shall use a system of active electronic monitoring that identifies the location of a monitored offender and can produce, upon request, reports or records of the offender's presence near or within a crime scene, a prohibited area, or departure from specified geographical limitations.

Probation and community control: The Department of Correction oversees several types of supervision, including probation and community control. Section 948.30, F.S., requires that a sentencing court impose certain conditions of probation or community control for offenders who are placed on sex offender probation for violating ch. 794, F.S. (sexual battery), s. 800.04, F.S. (lewd and

¹³ <http://www.dc.state.fl.us/pub/spop/0501/tab02.html>

¹⁴ Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

¹⁵ s. 947.1405(7)(b)5, F.S.

¹⁶ s. 794.05, s. 800.04, s. 827.071, or s. 847.0145

lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071, F.S. (sexual performance by a child), or s. 847.0145, F.S. (selling or buying of minors). Subsection (1) of the section includes conditions for all such offenders whose offense date is on or after October 1, 1995. Subsection (2) of the section includes additional requirements that apply only to such offenders who are placed on sex offender probation and whose offense date was on or after October 1, 1997. Subsection (2) includes a provision for requiring electronic monitoring, but it is not a true statutory mandate because: (a) it only applies when the court places the offender on sex-offender probation, which is not done in all eligible cases; and (b) it may only be ordered "when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections." s. 948.30(2)(e), F.S.

The bill provides that effective for a probationer or community controllee whose crime was committed on or after July 1, 2005, and who was placed on sex offender probation for a violation of s. 794, s. 800.04, s. 827.071, or s. 847.0145, or who is designated a sexual predator pursuant to s. 775.21, in addition to any other provision of this section, the court shall order electronic monitoring.

The bill amends s.948.11, F.S. to provide that for any probationer or community controllee placed on electronic monitoring pursuant to s. 948.30(3), the department shall use a system of active electronic monitoring that identifies the location of a monitored offender and can produce, upon request, reports or records of the offender's presence near or within a crime scene, a prohibited area, or departure from specified geographical limitations.

Aggravating factors in capital case: When a defendant is convicted of a capital felony, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. After hearing evidence, the jury renders an advisory sentence to the judge based on the following factors:

- a) Whether sufficient aggravating circumstances exist
- b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

Section 921.141, F.S. provides a list of aggravating factors to be considered by the jury and the judge as follows:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal street gang member, as defined in s. 874.03.

This bill adds to the list of aggravating circumstances that the capital felony was committed by a person designated a sexual predator pursuant to s. 775.21, or a person previously designated a sexual predator who had the sexual predator designation removed.

C. SECTION DIRECTORY:

Section 1. Provides that act shall be known as the Jessica Lunsford Act.

Section 2. Amends s. 775.21, F.S., relating to criteria for sexual predator designation.

Section 3. Amends s. 921.141, F.S. to add to list of aggravating circumstances in capital case.

Section 4. Amends s. 948.30, F.S. relating to terms of probation and community control for certain sex offenses.

Section 5. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 6. Amends s. 947.1405, F.S. relating to conditional release program to provide for electronic monitoring.

Section 7. Creating s. 947.1406, F.S. relating to electronic monitoring for certain sex offenders and sex predators.

Section 8. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill requires electronic monitoring of supervised sexual offenders and sexual predators. According to an analysis of the bill by the Department of Corrections, the provisions of the bill should be clarified to indicate whether the bill is meant to include offenders placed on sex offender community control or whether it is only meant to include offenders on sex offender probation. If the bill requires monitoring for both types of supervision, the department estimates that in the first year 180 offenders will be impacted, in the second year 785 offenders will be impacted and in the third year 1666 offenders will be impacted. Additionally, in the first year, one conditional releasee will be impacted, in the second year, ten conditional releasees will be impacted and in the third year, 31 conditional releasees will be impacted. Based on these figures, the department estimates that the bill will have the following fiscal impact on the department:

Total Fiscal Impact-Department of Corrections

| | FY 2005-06 | FY 2006-07 | FY 2007-08 |
|----------------------|--------------------|--------------------|---------------------|
| Recurring | \$1,319,855 | \$5,759,548 | \$12,315,848 |
| Non-recurring | 107,016 | 478,528 | 1,018,394 |
| Total | \$1,426,871 | \$6,238,076 | \$13,334,242 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a fiscal impact on a person on supervision who will be placed electronic monitoring.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted two amendments to the PCB as originally drafted. The amendments added the provision regarding harboring a sexual predator or sexual offender who is not in compliance with reporting requirements and clarified the type of electronic monitoring that will be used.