

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The bill clarifies that certain provisions of the Jessica Lunsford Act apply only to felony offenses – not to misdemeanor offenses.

Promote personal responsibility: The bill increases the penalty for certain offenses relating to failing to comply with the requirements of sexual predator or sexual offender registration.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration: There are more than 5,500 sexual predators and more than 30,000 sexual offenders in the state registry which is maintained by the Florida Department of Law Enforcement. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ Failure to comply with these requirements is a third or second degree felony, depending of the offense.

The United States Department of Justice has recently developed the “National Sex Offender Public Registry” - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual’s name.² According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

Jessica Lunsford Act: During the 2005 session, HB 1877, known as the Jessica Lunsford Act or the “JLA”, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12.

Offense ranking chart: The JLA ranked several offenses relating to compliance with sexual predator and sexual offender registration requirements in level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record and other aggravating factors. Offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the “lowest permissible sentence” for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the

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

² <http://www.nsopr.gov/>

statutory maximum for the primary offense. 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. s. 775.082, F.S.

A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence of 21-months in state prison.

The following offenses were inadvertently not ranked by the Jessica Lunsford Act:

- Section 775.21(6)(g)3., F.S. Sexual predator vacating permanent residence; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S. Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S. Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S. Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

Because these offenses were not given a specific ranking in the offense severity ranking chart they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. Pursuant to s. 921.0023, F.S., the third degree felony offenses previously described defaulted to a Level 1 ranking and the second degree felony offenses previously described defaulted to a Level 4 ranking. The effect of these defaults is that, unlike the offenses ranked in the JLA, which score a lowest permissible sentence of imprisonment by virtue of their ranking, the defaulted offenses, which are comparable in seriousness to the offenses ranked by the JLA, will generally not score a lowest permissible sentence of imprisonment.

This bill ranks these offenses in Level 7 of the Offense Severity Ranking Chart.

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires certain inmates that are nearing the end of their sentence to be released under close supervision.³ 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 offenses⁴ 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. The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.⁵ The Department of Corrections supervises the offender while on conditional release.

Section 12 of the Jessica Lunsford Act created s. 947.1405(10), F.S. to provide that, effective for a conditional releasee whose crime was committed on or after September 1, 2005, in violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a conditional releasee who is designated as a sexual predator pursuant to s. 775.21, F.S., in addition to any other provision of this section, the Florida Parole Commission must order electronic monitoring for the duration of the conditional releasee's supervision.

³ s. 947.1405(2), F.S

⁴ The relevant offenses are listed in categories 1, 2, 3 and 4 of Rule 3.701 of the Florida Rules of Criminal Procedure. Included in these categories are the offenses of murder, DUI and BUI manslaughter, sexual battery, lewd or lascivious offenses, incest, sexual misconduct by a psychotherapist, robbery, carjacking, home invasion robbery, aggravated assault, aggravated battery, aggravated stalking and resisting an officer with violence

⁵ The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

The Jessica Lunsford Task Force,⁶ which was created by the JLA, and which was required by the JLA to examine the collection and dissemination of offender information within the criminal justice system and community, released its findings and recommendations on February 6, 2006.⁷ The task force noted that while Section 12 of the JLA included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law. The task force recommended amending s. 947.1405(2), F.S. to list sexual performance, selling or buying of minors, and some other serious offenses in the eligibility criteria for conditional release.

This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

Electronic monitoring/supervision: Section 17 of the JLA created s. 948.063, F.S. which provided that if probation or community control is revoked by the court and the offender is designated as a sexual offender or sexual predator pursuant for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court is required to order electronic monitoring as a condition of the subsequent term of probation or community control.

Questions have been raised as to whether the Legislature intended to apply the amendment to s. 948.063, F.S., to misdemeanors. In its "Finding #5, the Jessica Lunsford Task Force found that "[c]onfusion exists as whether this [Section 17 of the JLA] includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level."

The bill amends s. 948.063, F.S., to clarify that this section applies specifically to revocations of probation or community control for any *felony* offense. It also clarifies what is meant by a "designated sexual offender" by adding the language "pursuant s. 943.0435, F.S. or s. 944.607, F.S.," which are the sections of the Florida Statutes relevant to registration requirements for sexual offenders.

Section 20 of the Jessica Lunsford Act created s. 948.30(3), F.S., to provide that, effective for a probationer or community controllee whose *crime* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., 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;
- Is designated a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., 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.

Similar to Section 17 of the JLA, questions have been raised as whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors. This bill revises s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses.

⁶ The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

⁷ All discussion in this analysis of the task force and its findings and recommendations is from *Jessica Lunsford Task Force*, Criminal and Juvenile Justice Information Systems Council (February 6, 2005).

Registry check prior to appointment or employment by governmental entity: Section 943.04351, F.S. requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to search that person's name against FDLE's sexual offender registry. This bill requires the state agency or governmental subdivision to also check the person's name against the registration information regarding sex offenders maintained by the FBI in the National Sex Offender Public Registry.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S. to rank in the offense severity ranking chart of the Criminal Punishment Code, several offenses relating to failure by a sexual predator or sexual offender to comply with certain reporting requirements.

Section 2. Amends s. 943.04351, F.S. to require a search of the National Sex Offender Public Registry in certain circumstances.

Section 3. Amends s. 948.063, F.S. to require that court order electronic monitoring upon revocation of probation or community control for a felony offense in certain circumstances.

Section 4. Amends s. 948.30, F.S. to require that the court order electronic monitoring as a condition of supervision in certain felony cases.

Section 5. Amends s. 947.1405, F.S. to expand the eligibility criteria for the conditional release program.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill clarifies that the requirement of electronic monitoring does not apply to a person on misdemeanor probation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES