

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 455 Criminal Offenders

**SPONSOR(S):** Glorioso and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1800

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

### SUMMARY ANALYSIS

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

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

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

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

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

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

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

##### *Effect of the Bill*

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

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

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

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

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>3</sup> A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>4</sup> Failure to comply with these requirements is generally a third degree felony.<sup>5</sup>

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

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

### *Effect of the Bill*

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

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

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

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

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<sup>3</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Sections 775.21(10) and 943.0435(14), F.S.

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

<sup>7</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

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

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

### *Effect of the Bill*

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

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

## **Search of Registration Information (Section 3)**

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

### *Effect of the Bill*

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

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

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

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

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

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<sup>12</sup> See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

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

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

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

<sup>16</sup> Sections 775.21(6) and 943.0435(11), F.S.

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

#### *Effect of the Bill*

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

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

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

#### **Definition of Risk Assessment (Section 8)**

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

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

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

#### *Effect of the Bill*

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

#### **Conditions of Supervision – Conditional Release (Section 9)**

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

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

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

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<sup>17</sup> Chapter 2010-92, L.O.F.

### *Effect of the Bill*

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

### **Conditions of Sexual Offender Probation (Section 10)**

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

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

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

### *Effect of the Bill*

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

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

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

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

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

### **Conditions of Supervision – Sex Offender Treatment (Section 11)**

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

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<sup>18</sup> Section 948.001(8), F.S.

<sup>19</sup> Section 948.03, F.S.

<sup>20</sup> Section 948.30(3), F.S.

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

### *Effect of the Bill*

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

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

## **Bail Determinations (Section 14)**

### Pretrial Release

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

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

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

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

<sup>22</sup> *Id.*

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

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

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

#### *Effect of the Bill*

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

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,<sup>27</sup> is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance<sup>28</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.

#### **Split Sentences (Section 15)**

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

#### **Special Terms and Conditions of Probation (Section 16)**

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

#### **Severability Clause**

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

#### **B. SECTION DIRECTORY:**

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

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

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

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

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

<sup>25</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

<sup>26</sup> Section 903.046, F.S.

<sup>27</sup> Chapter 316, F.S., is the State Uniform Traffic Control chapter.

<sup>28</sup> See Rule 3.130, Fla. R. Crim. Proc.



Section 6. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 7. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 8. Amends s. 947.005, F.S., relating to definitions.

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

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

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

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

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

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

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

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

Section 17. Provides a severability clause.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

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

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

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

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

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

### 2. Expenditures:

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

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill:

- Does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- Is a criminal law.

#### 3. Other:

##### Ex Post Facto

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

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

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

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

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

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

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

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**