

Appropriations Committee

Wednesday, February 12, 2014
12:00 PM – 3:00 PM
212 Knott Building

Meeting Packet



The Florida House of Representatives

Appropriations Committee

Will Weatherford
Speaker

Seth McKeel
Chair

AGENDA

Wednesday, February 12, 2014


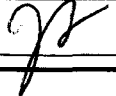
212 Knott Building

12:00 PM – 3:00 PM

- I. Call to Order/Roll Call
- II. Opening Remarks by Chair McKeel
- III. **Consideration of the following proposed committee bill:**
PCB APC 14-01 -- Trust Funds/Re-creation/Federal Grants
- IV. **Consideration of the following bills:**
HB 7013 Sexually Violent Predator Program by Criminal Justice Subcommittee, Slosberg
HB 7017 Supervision of Sexually Violent Predators by Criminal Justice Subcommittee, Clelland
HB 7019 Civil Commitment of Sexually Violent Predators by Criminal Justice Subcommittee, Hutson
HB 7021 Sexually Violent Predators by Healthy Families Subcommittee, Harrell
HB 7025 Sexual Offenders by Criminal Justice Subcommittee, Eagle
HB 7027 Sexual Offenses by Criminal Justice Subcommittee, Gaetz
- V. Retirement Systems Overview
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

BILL #: PCB APC 14-01 Trust Funds/Re-creation/Federal Grants
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Kramer 	Leznoff 

I. SUMMARY

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created in the Executive Office of the Governor effective July 1, 2011 in Ch. 2011-65, Laws of Florida, and is scheduled to terminate on July 1, 2015.

This legislation re-creates the Federal Grants Trust Fund in the Executive Office of the Governor without modification, effective July 1, 2014, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

II. SUBSTANTIVE ANALYSIS

A. PRESENT SITUATION:

1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created within the Executive Office of the Governor effective July 1, 2011 by chapter 2011-65, Laws of Florida in s. 14.235, F.S. and is scheduled to terminate on July 1, 2015..

2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

The trust fund is used to disburse Federal Emergency Management Agency (FEMA) funds for disasters. Funds can be used for preparedness, response, recovery and mitigation activities and projects.

3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Funds credited to the trust fund consist of grants and funding from the Federal Government, interest earnings, and cash advances from other trust funds

4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

The total projected receipts into this fund for the current year are \$137,720,852 and current year appropriations from the fund are \$134,655,216.

B. EFFECT OF PROPOSED CHANGES:

The bill re-creates the Federal Grants Trust Fund within the Executive Office of the Governor without modification, effective July 1, 2014 and repeals the scheduled termination of the trust fund.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

IV. COMMENTS

V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to trust funds; re-creating the
 3 Federal Grants Trust Fund within the Executive Office
 4 of the Governor without modification; amending s.
 5 14.235, F.S.; abrogating provisions relating to the
 6 termination of the trust fund, to conform; providing a
 7 contingent effective date.

8
 9 WHEREAS, the Legislature wishes to extend the life of the
 10 Federal Grants Trust Fund within the Executive Office of the
 11 Governor, which is otherwise scheduled to be terminated pursuant
 12 to constitutional mandate, and

13 WHEREAS, the Legislature has reviewed the trust fund before
 14 its scheduled termination date and has found that it continues
 15 to meet an important public purpose, and

16 WHEREAS, the Legislature has found that existing public
 17 policy concerning the trust fund sets adequate parameters for
 18 its use, NOW, THEREFORE,

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. The Federal Grants Trust Fund within the
 23 Executive Office of the Governor, FLAIR number 31-2-261, which
 24 is to be terminated pursuant to Section 19(f)(2), Article III of
 25 the State Constitution on July 1, 2015, is re-created.

26 Section 2. Subsection (4) of section 14.235, Florida

27 Statutes, is amended to read:

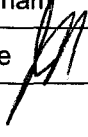
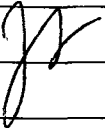
28 14.235 Federal Grants Trust Fund; Executive Office of the
29 Governor.—

30 ~~(4) In accordance with s. 19(f)(2), Art. III of the State~~
31 ~~Constitution, the trust fund shall, unless terminated sooner, be~~
32 ~~terminated on July 1, 2015. Before its scheduled termination,~~
33 ~~the trust fund shall be reviewed as provided in s. 215.3206(1)~~
34 ~~and (2).~~

35 Section 3. This act shall take effect July 1, 2014, but it
36 shall not take effect unless it is enacted by a three-fifths
37 vote of the membership of each house of the Legislature.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB CRJS 14-03 Sexually Violent Predator Program
SPONSOR(S): Criminal Justice Subcommittee, Slosberg
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee		McAuliffe 	Leznoff 
2) Judiciary Committee			

SUMMARY ANALYSIS

In 1998, the Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Ryce Act. Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment as to whether the offender meets the clinical definition of a sexually violent predator. A sexually violent predator is a person who has been convicted of a sexually violent offense and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.

If a judge determines that probable cause exists to believe an offender is a sexually violent predator, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. After trial, those civilly committed as sexually violent predators are housed for treatment at FCCC, and remain confined until the court determines that they are no longer a threat to public safety.

Section 394.926, F.S., currently requires DCF to give victims written notice of the release of a person committed as a sexually violent predator. If such person being released has an active or pending term of community supervision, DCF must also notify the Department of Corrections (DOC). There is no statutory requirement that DCF provide notice of the release of a person that has simply been detained at the FCCC.

The bill requires DCF to notify victims and DOC of the release of *all* persons in the custody of DCF – not just those *committed* as a sexually violent predator. The bill also requires DCF to provide such notice to sheriffs in the county in which the person intends to reside or, if unknown, in the county in which the person was last convicted.

The bill requires DOC to compile recidivism data on those referred, detained, or committed to DCF, and submit this data to the Legislature annually.

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have no impact on state prison beds. According to DCF and DOC, this bill will not have a fiscal impact.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexually Violent Predator Program - Background

A sexually violent predator is a person who has been convicted of a sexually violent offense¹ and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁵ Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.⁷

Those civilly committed as sexually violent predators pursuant to the Ryce Act are housed for treatment at FCCC.⁸ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.⁹ However, persons committed to the state under the Ryce Act must be confined until the court determines that they are no longer a threat to public safety.¹⁰

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether

¹ Section 394.912(9), F.S., defines the term "sexually violent offense" as:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery; or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or
- Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

² Section 394.912(10), F.S.

³ Part V of Chapter 394, F.S.

⁴ *Conditional Release of Sexually Violent Predators through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011 (on file with the Criminal Justice Subcommittee).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ FCCC is a 720-bed, physically secure facility located in Arcadia, FL, and operated by the GEO Group. *Id.*

⁹ *Id.*

¹⁰ Section 394.918, F.S.

there is probable cause to believe that the person's condition has so changed that it is safe for him or her to be released.¹¹ If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹²

Notice of Release

Section 394.926, F.S., currently requires DCF to give victims written notice of the release of a person *committed* as a sexually violent predator. If such person being released has an active or pending term of community supervision, DCF must also notify the Department of Corrections (DOC). There is no requirement that DCF provide notice of the release of a person that has simply been *detained* at FCCC.

Effect of the Bill

The bill requires DCF to notify victims and DOC of the release of *all* persons in the custody of DCF – not just those *committed* as a sexually violent predator. The bill also requires DCF to provide such notice to the sheriff in the county in which the person intends to reside or, if unknown, in the county in which the person was last convicted.

Reporting Requirements

Section 394.931, F.S., requires DOC to collect information and compile quarterly reports on inmates released the previous quarter who met the Ryce Act criteria and were referred to DCF. At a minimum, the information that must be collected and compiled includes:

- Whether the qualifying offense was the current offense or the prior offense;
- The most serious sexual offense;
- The total number of distinct victims of the sexual offense;
- Whether the victim was known to the offender;
- Whether the sexual act was consensual;
- Whether the sexual act involved multiple victims;
- Whether direct violence was involved in the sexual offense; the age of each victim at the time of the offense;
- The age of the offender at the time of the first sexual offense;
- Whether a weapon was used;
- Length of time since the most recent sexual offense; and
- The total number of prior and current sexual-offense convictions.

In addition, DCF is required to implement a long-term study to determine the overall efficacy of the provisions of the Ryce Act.

Effect of the Bill

The bill removes obsolete language requiring DCF to implement a long-term study to determine the overall efficacy of the Ryce Act, and requires DOC to compile recidivism data on those referred, detained, or committed to DCF. The recidivism data must be submitted to the Legislature annually.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to the Department of Corrections and Parole Commission.

Section 2. Amends s. 394.931, F.S., relating to quarterly reports.

Section 3. Provides an effective date of July 1, 2014.

¹¹ *Id.*

¹² *Id.*

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 met on January 30, 2014 and determined this bill will have no impact on state prison beds. According to DCF, the notice requirements imposed by the bill will not have a fiscal impact.¹³ DOC reports that the requirement to compile recidivism data will not have a fiscal impact.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹³ E-mail dated 1/9/14 from Tim Parson, DCF's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).

¹⁴ E-mail dated 1/9/14 from Will Kendrick, DOC's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the sexually violent predator program; amending s. 394.926, F.S.; requiring the Department of Children and Families to notify the victim, the Department of Corrections, the Parole Commission, and the sheriffs of specified counties upon the release of certain persons; amending s. 394.931, F.S.; requiring the Department of Corrections to annually submit recidivism data; deleting obsolete provisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 394.926, Florida Statutes, is amended to read:

394.926 Notice to victims and others of release of persons in the custody of the department ~~committed as sexually violent predators; notice to Department of Corrections and Parole Commission.~~

(1) As soon as is practicable, the department shall give written notice of the release of a person in the custody of the department ~~committed as a sexually violent predator~~ to any victim of the ~~committed~~ person who is alive and whose address is known to the department or, if the victim is deceased, to the victim's family, if the family's address is known to the department. Failure to notify is not a reason for postponement

27 of release. This section does not create a cause of action
 28 against the state or an employee of the state acting within the
 29 scope of the employee's employment as a result of the failure to
 30 notify pursuant to this part.

31 (2) If a person in the custody of the department ~~sexually~~
 32 ~~violent predator~~ who has an active or pending term of probation,
 33 community control, parole, conditional release, or other court-
 34 ordered or postprison release supervision is released ~~from~~
 35 ~~custody~~, the department must immediately notify the Department
 36 of Corrections' Office of Community Corrections in Tallahassee.
 37 The Parole Commission must also be immediately notified of any
 38 releases of a person ~~sexually violent predator~~ who has an active
 39 or pending term of parole, conditional release, or other
 40 postprison release supervision that is administered by the
 41 Parole Commission.

42 (3) If a person in the custody of the department is
 43 released, the department must notify the sheriff of the county
 44 in which the person intends to reside, or if unknown, the
 45 sheriff of the county in which the person was last convicted.

46 Section 2. Section 394.931, Florida Statutes, is amended
 47 to read:

48 394.931 Quarterly reports.—

49 ~~Beginning July 1, 1999,~~ The Department of Corrections shall
 50 collect information and compile quarterly reports with
 51 statistics profiling inmates released the previous quarter who
 52 fit the criteria and were referred to the department ~~of Children~~

HB 7013

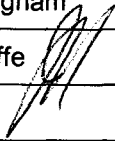

2014

53 ~~and Family Services pursuant to this part act. The quarterly~~
54 ~~reports must be produced beginning October 1, 1999. At a~~
55 minimum, the information that must be collected and compiled for
56 inclusion in the reports includes: whether the qualifying
57 offense was the current offense or the prior offense; the
58 offender's most serious sexual offense; the total number of
59 distinct victims of the sexual offense; whether the victim was
60 known to the offender; whether the sexual act was consensual;
61 whether the sexual act involved multiple victims; whether direct
62 violence was involved in the sexual offense; the age of each
63 victim at the time of the offense; the age of the offender at
64 the time of the first sexual offense; whether a weapon was used;
65 length of time since the most recent sexual offense; and the
66 total number of prior and current sexual-offense convictions.
67 The Department of Corrections shall compile recidivism data on
68 those referred, detained, or committed to the department. The
69 data shall be submitted annually to the Legislature ~~In addition,~~
70 ~~the Department of Children and Family Services shall implement a~~
71 ~~long-term study to determine the overall efficacy of the~~
72 ~~provisions of this part.~~

73 Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7017 PCB CRJS 14-05 Supervision of Sexually Violent Predators
SPONSOR(S): Criminal Justice Subcommittee, Clelland
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee		McAuliffe 	Leznoff 
2) Judiciary Committee			

SUMMARY ANALYSIS

In 1998, the Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Ryce Act. Under the Ryce Act, offenders convicted of a sexually violent offense who are nearing the end of their prison sentence are referred to the Department of Children and Families (DCF) for assessment as to whether the offender meets the clinical definition of a sexually violent predator. If a judge determines that probable cause exists to believe an offender is a sexually violent predator, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. After trial, those civilly committed as sexually violent predators are housed for treatment at FCCC, and remain confined until the court determines that they are no longer a threat to public safety.

In many instances, offenders convicted of a sexually violent offense are sentenced to a term of community supervision (e.g., probation, community control, conditional release, etc.) following their release from prison (split sentence). Currently, an offender's community supervision term begins immediately upon his or her release from prison, even if the offender is referred to DCF and confined at FCCC for Ryce Act proceedings. Many of these offenders complete their entire community supervision period while confined at FCCC.

The bill tolls the community supervision period of offenders sentenced to a split sentence who are transferred to DCF's custody pursuant to the Ryce Act. The supervision period is tolled until the offender is no longer in DCF's custody.

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have no impact on state prison beds. DOC reports that this bill will have no fiscal impact on community corrections because of the low volume of offenders distributed throughout the state. Further, any impact would occur years after the effective date of this act as offenders are released from DCF custody and that impact is expected to be insignificant.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexually Violent Predator Program - Background

A sexually violent predator is a person who has been convicted of a sexually violent offense¹ and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁵ Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team (MDT) as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center (FCCC)⁷ until a trial is conducted. At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.⁸

Those civilly committed as sexually violent predators are housed for treatment at FCCC. The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.⁹ However, persons committed to the state under the Ryce Act must be confined until the court determines that they are no longer a threat to public safety.¹⁰

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or

¹ Section 394.912(9), F.S., defines the term "sexually violent offense" as:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery or a lewd, lascivious, or indecent assault or act upon or in the presence of the child.
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or
- Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings has been determined beyond a reasonable doubt to have been sexually motivated.

² Section 394.912(10), F.S.

³ Part V of ch. 394, F.S.

⁴ *Conditional Release of Sexually Violent Predators through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011. On file with Criminal Justice Subcommittee staff.

⁵ *Id.*

⁶ *Id.*

⁷ FCCC is a 720-bed, physically secure facility located in Arcadia, FL, and operated by the GEO Group. *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 394.918, F.S.

her to be released.¹¹ If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹²

Civil Commitment / Community Supervision

In many instances, an offender convicted of a sexually violent offense will receive a split sentence, whereby he or she is sentenced to serve a specified number of years incarcerated at a Department of Corrections (DOC) institution followed by a specified number of years of community supervision (e.g., probation, community control, conditional release, etc.).¹³ In such instances, the offender is transferred to DCF's custody for civil commitment proceedings upon completing the incarcerative portion of his or her sentence. Despite being in DCF's custody, the offender's community supervision period begins to run immediately upon release from DOC – it is not tolled.¹⁴ As such, many offenders who receive a split sentence and who are transferred to DCF's custody complete their entire community supervision period while confined at FCCC.

According to DOC, as of December, 2013, there were 182 offenders confined at FCCC on community supervision.¹⁵ Of the 59 offenders released from FCCC in 2013, 17 were still on community supervision when released, and 6 had their community supervision period end prior to their release.¹⁶

Effect of the Bill

The bill tolls the community supervision period of offenders sentenced to a split sentence who are transferred to DCF's custody pursuant to the Ryce Act. The supervision period is tolled until the offender is no longer in DCF's custody.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Parole Commission.

Section 2. Amends s. 947.1405, F.S., relating to conditional release program.

Section 3. Amends s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 4. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 5. Provides an effective date of October 1, 2014.

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:

¹¹ *Id.*

¹² *Id.*

¹³ Section 948.012, F.S.

¹⁴ Section 948.012(1), F.S. *Also see, Parole Com'n v. Smith*, 896 So.2d 966 (Fla. 2nd DCA 2005); *David v. Meadows*, 881 So.2d 653 (Fla. 1st DCA 2004); and *State v. Harris*, 881 So.2d 1079 (Fla. 2004).

¹⁵ E-mail dated January 13, 2014, from David Ensley, DOC's Research and Data Analysis Bureau Chief (on file with the Criminal Justice Subcommittee).

¹⁶ *Id.*

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have no impact on state prison beds. DOC reports that this bill will have no fiscal impact on community corrections because of the low volume of offenders distributed throughout the state. Further, any impact would occur years after the effective date of this act as offenders are released from DCF custody and that impact is expected to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Florida courts have held that community supervision is not tolled while in DCF's custody pursuant to the Ryce Act.¹⁷ In doing so, they have not held that the constitution prohibits tolling, but have instead pointed to the applicable criminal and civil statutes and noted that nowhere do the statutes require tolling.¹⁸

The bill amends ss. 947.1405 and 948.012, F.S., to specify that one's community supervision is tolled while in DCF's custody pursuant to the Ryce Act. While there is no case law directly addressing the constitutionality of this concept, the idea that a person should not be on probation while confined is not unique. In 2007, Florida 5th District Court of Appeal stated:

It is well settled that a defendant cannot serve a prison term and be on probation simultaneously. *Porter v. State*, 585 So.2d 399, 400 (Fla. 1st DCA 1991). To hold otherwise would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison confinement. Any term of probation presumed to run when the defendant cannot be supervised would be a nullity. As this court explained in *State v. Savage*, 589 So.2d 1016, 1018 (Fla. 5th DCA 1991):

¹⁷ See, e.g., *Parole Com'n v. Smith*, 896 So.2d 966 (Fla. 2nd DCA 2005); *David v. Meadows*, 881 So.2d 653 (Fla. 1st DCA 2004); and *State v. Harris*, 881 So.2d 1079 (Fla. 2004).

¹⁸ *David v. Meadows*, 881 So.2d 653, 654 (Fla. 1st DCA 2004).

Simple logic would seem to dictate that, where a defendant is incarcerated ..., a probationary period from an unrelated sentence would be tolled since a probationary term should not be allowed to expire simply because a defendant has decided to incur new prison time as a result of a separate and distinct offense.¹⁹

Because persons detained by and committed to DCF pursuant to the Ryce Act are essentially confined, the 5th DCA's argument in favor of tolling supervision would appear to apply. However, confinement pursuant to the Ryce Act is the result of a civil proceeding – not a criminal proceeding, which is factually a different scenario than that addressed by the 5th DCA. As such, the bill could be challenged as violating double jeopardy²⁰ principles or one's due process rights,²¹

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment to the PCB and reported the PCB favorably. The amendment removes the requirement that DCF notify DOC of the release of a person who has an *active* term of probation. Because the bill tolls an offender's community supervision period until the offender is no longer in DCF's custody, offender's being released from DCF's custody will no longer have an *active* term of probation.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

¹⁹ *Jones v. State*, 964 So.2d 167 (Fla 5th DCA 2007).

²⁰ The double jeopardy clause (found in the Fifth Amendment of the United States Constitution and Article I, Section 9 of the Florida Constitution) protects against the imposition of multiple criminal penalties for the same offense.

²¹ The due process clause (found in the Fifth Amendment of the United States Constitution and applied to states through the Fourteenth Amendment, and in Article I, Section 9 of the Florida Constitution) require a state to provide due process of law before depriving any person of life, liberty or property.

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1 A bill to be entitled
 2 An act relating to supervision of sexually violent
 3 predators; amending s. 394.926, F.S.; requiring the
 4 Department of Children and Families to notify the
 5 Department of Corrections and the Parole Commission if
 6 a sexually violent predator who has a pending term of
 7 court-ordered or postprison release supervision is
 8 released from custody; amending s. 947.1405, F.S.;
 9 tolling the conditional release period of persons
 10 transferred to the custody of the Department of
 11 Children and Families; amending s. 948.012, F.S.;
 12 tolling the supervision period of persons with split
 13 sentences and who have been transferred to the custody
 14 of the Department of Children and Families; amending
 15 s. 775.21, F.S.; correcting a cross-reference;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (2) of section 394.926, Florida
 21 Statutes, is amended to read:

22 394.926 Notice to victims of release of persons committed
 23 as sexually violent predators; notice to Department of
 24 Corrections and Parole Commission.—

25 (2) If a sexually violent predator who has a ~~an active or~~
 26 pending term of probation, community control, parole,

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27 conditional release, or other court-ordered or postprison
 28 release supervision is released from custody, the department
 29 must immediately notify the Department of Corrections' Office of
 30 Community Corrections in Tallahassee. The Parole Commission must
 31 also be immediately notified of any releases of a sexually
 32 violent predator who has a ~~an active or~~ pending term of parole,
 33 conditional release, or other postprison release supervision
 34 that is administered by the Parole Commission.

35 Section 2. Section 947.1405, Florida Statutes, is amended
 36 to read:

37 947.1405 Conditional release program.—

38 (1) This section and s. 947.141 may be cited as the
 39 "Conditional Release Program Act."

40 (2) Any inmate who:

41 (a) Is convicted of a crime committed on or after October
 42 1, 1988, and before January 1, 1994, and any inmate who is
 43 convicted of a crime committed on or after January 1, 1994,
 44 which crime is or was contained in category 1, category 2,
 45 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
 46 Rules of Criminal Procedure (1993), and who has served at least
 47 one prior felony commitment at a state or federal correctional
 48 institution;

49 (b) Is sentenced as a habitual or violent habitual
 50 offender or a violent career criminal pursuant to s. 775.084; or

51 (c) Is found to be a sexual predator under s. 775.21 or
 52 former s. 775.23,

53
 54 shall, upon reaching the tentative release date or provisional
 55 release date, whichever is earlier, as established by the
 56 Department of Corrections, be released under supervision subject
 57 to specified terms and conditions, including payment of the cost
 58 of supervision pursuant to s. 948.09. Such supervision shall be
 59 applicable to all sentences within the overall term of sentences
 60 if an inmate's overall term of sentences includes one or more
 61 sentences that are eligible for conditional release supervision
 62 as provided in this section ~~herein~~.

63 (3) If a person who is transferred to the custody of the
 64 Department of Children and Families pursuant to part V of
 65 chapter 394 is subject to conditional release supervision, the
 66 period of conditional release supervision is tolled until such
 67 person is no longer in the custody of the Department of Children
 68 and Families. This subsection applies to all periods of
 69 conditional release supervision which begin on or after October
 70 1, 2014, regardless of the date of the underlying offense.

71 (4) Effective July 1, 1994, and applicable for offenses
 72 committed on or after that date, the commission may require, as
 73 a condition of conditional release, that the releasee make
 74 payment of the debt due and owing to a county or municipal
 75 detention facility under s. 951.032 for medical care, treatment,
 76 hospitalization, or transportation received by the releasee
 77 while in that detention facility. The commission, in determining
 78 whether to order such repayment and the amount of such

79 repayment, shall consider the amount of the debt, whether there
80 was any fault of the institution for the medical expenses
81 incurred, the financial resources of the releasee, the present
82 and potential future financial needs and earning ability of the
83 releasee, and dependents, and other appropriate factors.

84 (5) If any inmate placed on conditional release
85 supervision is also subject to probation or community control,
86 resulting from a probationary or community control split
87 sentence within the overall term of sentences, the Department of
88 Corrections shall supervise such person according to the
89 conditions imposed by the court and the commission shall defer
90 to such supervision. If the court revokes probation or community
91 control and resentsences the offender to a term of incarceration,
92 such revocation also constitutes a sufficient basis for the
93 revocation of the conditional release supervision on any
94 nonprobationary or noncommunity control sentence without further
95 hearing by the commission. If any such supervision on any
96 nonprobationary or noncommunity control sentence is revoked,
97 such revocation may result in a forfeiture of all gain-time, and
98 the commission may revoke the resulting deferred conditional
99 release supervision or take other action it considers
100 appropriate. If the term of conditional release supervision
101 exceeds that of the probation or community control, then, upon
102 expiration of the probation or community control, authority for
103 the supervision shall revert to the commission and the
104 supervision shall be subject to the conditions imposed by the

105 | commission.

106 | (6) A panel of no fewer than two commissioners shall
 107 | establish the terms and conditions of any such release. If the
 108 | offense was a controlled substance violation, the conditions
 109 | shall include a requirement that the offender submit to random
 110 | substance abuse testing intermittently throughout the term of
 111 | conditional release supervision, upon the direction of the
 112 | correctional probation officer as defined in s. 943.10(3). The
 113 | commission shall also determine whether the terms and conditions
 114 | of such release have been violated and whether such violation
 115 | warrants revocation of the conditional release.

116 | ~~(7)(3)~~ As part of the conditional release process, the
 117 | commission, through review and consideration of information
 118 | provided by the department, shall determine:

- 119 | (a) The amount of reparation or restitution.
- 120 | (b) The consequences of the offense as reported by the
 121 | aggrieved party.
- 122 | (c) The aggrieved party's fear of the inmate or concerns
 123 | about the release of the inmate.

124 | ~~(8)(4)~~ The commission shall provide to the aggrieved party
 125 | information regarding the manner in which notice of any
 126 | developments concerning the status of the inmate during the term
 127 | of conditional release may be requested.

128 | ~~(9)(5)~~ Within 180 days prior to the tentative release date
 129 | or provisional release date, whichever is earlier, a
 130 | representative of the department shall review the inmate's

131 program participation, disciplinary record, psychological and
 132 medical records, criminal records, and any other information
 133 pertinent to the impending release. The department shall gather
 134 and compile information necessary for the commission to make the
 135 determinations set forth in subsection (7) ~~(3)~~. A department
 136 representative shall conduct a personal interview with the
 137 inmate for the purpose of determining the details of the
 138 inmate's release plan, including the inmate's planned residence
 139 and employment. The department representative shall forward the
 140 inmate's release plan to the commission and recommend to the
 141 commission the terms and conditions of the conditional release.

142 (10)~~(6)~~ The commission shall review the recommendations of
 143 the department, and such other information as it deems relevant,
 144 and may conduct a review of the inmate's record for the purpose
 145 of establishing the terms and conditions of the conditional
 146 release. The commission may impose any special conditions it
 147 considers warranted from its review of the release plan and
 148 recommendation. If the commission determines that the inmate is
 149 eligible for release under this section, the commission shall
 150 enter an order establishing the length of supervision and the
 151 conditions attendant thereto. However, an inmate who has been
 152 convicted of a violation of chapter 794 or found by the court to
 153 be a sexual predator is subject to the maximum level of
 154 supervision provided, with the mandatory conditions as required
 155 in subsection (11) ~~(7)~~, and that supervision shall continue
 156 through the end of the releasee's original court-imposed

157 | sentence. The length of supervision must not exceed the maximum
 158 | penalty imposed by the court.

159 | (11)~~(7)~~(a) Any inmate who is convicted of a crime
 160 | committed on or after October 1, 1995, or who has been
 161 | previously convicted of a crime committed on or after October 1,
 162 | 1995, in violation of chapter 794, s. 800.04, s. 827.071, s.
 163 | 847.0135(5), or s. 847.0145, and is subject to conditional
 164 | release supervision, shall have, in addition to any other
 165 | conditions imposed, the following special conditions imposed by
 166 | the commission:

167 | 1. A mandatory curfew from 10 p.m. to 6 a.m. The
 168 | commission may designate another 8-hour period if the offender's
 169 | employment precludes the above specified time, and such
 170 | alternative is recommended by the Department of Corrections. If
 171 | the commission determines that imposing a curfew would endanger
 172 | the victim, the commission may consider alternative sanctions.

173 | 2. If the victim was under the age of 18, a prohibition on
 174 | living within 1,000 feet of a school, child care facility, park,
 175 | playground, designated public school bus stop, or other place
 176 | where children regularly congregate. A releasee who is subject
 177 | to this subparagraph may not relocate to a residence that is
 178 | within 1,000 feet of a public school bus stop. Beginning October
 179 | 1, 2004, the commission or the department may not approve a
 180 | residence that is located within 1,000 feet of a school, child
 181 | care facility, park, playground, designated school bus stop, or
 182 | other place where children regularly congregate for any releasee

183 who is subject to this subparagraph. On October 1, 2004, the
 184 department shall notify each affected school district of the
 185 location of the residence of a releasee 30 days prior to release
 186 and thereafter, if the releasee relocates to a new residence,
 187 shall notify any affected school district of the residence of
 188 the releasee within 30 days after relocation. If, on October 1,
 189 2004, any public school bus stop is located within 1,000 feet of
 190 the existing residence of such releasee, the district school
 191 board shall relocate that school bus stop. Beginning October 1,
 192 2004, a district school board may not establish or relocate a
 193 public school bus stop within 1,000 feet of the residence of a
 194 releasee who is subject to this subparagraph. The failure of the
 195 district school board to comply with this subparagraph shall not
 196 result in a violation of conditional release supervision. A
 197 releasee who is subject to this subparagraph may not be forced
 198 to relocate and does not violate his or her conditional release
 199 supervision if he or she is living in a residence that meets the
 200 requirements of this subparagraph and a school, child care
 201 facility, park, playground, designated public school bus stop,
 202 or other place where children regularly congregate is
 203 subsequently established within 1,000 feet of his or her
 204 residence.

205 3. Active participation in and successful completion of a
 206 sex offender treatment program with qualified practitioners
 207 specifically trained to treat sex offenders, at the releasee's
 208 own expense. If a qualified practitioner is not available within

209 a 50-mile radius of the releasee's residence, the offender shall
 210 participate in other appropriate therapy.

211 4. A prohibition on any contact with the victim, directly
 212 or indirectly, including through a third person, unless approved
 213 by the victim, a qualified practitioner in the sexual offender
 214 treatment program, and the sentencing court.

215 5. If the victim was under the age of 18, a prohibition
 216 against contact with children under the age of 18 without review
 217 and approval by the commission. The commission may approve
 218 supervised contact with a child under the age of 18 if the
 219 approval is based upon a recommendation for contact issued by a
 220 qualified practitioner who is basing the recommendation on a
 221 risk assessment. Further, the sex offender must be currently
 222 enrolled in or have successfully completed a sex offender
 223 therapy program. The commission may not grant supervised contact
 224 with a child if the contact is not recommended by a qualified
 225 practitioner and may deny supervised contact with a child at any
 226 time. When considering whether to approve supervised contact
 227 with a child, the commission must review and consider the
 228 following:

229 a. A risk assessment completed by a qualified
 230 practitioner. The qualified practitioner must prepare a written
 231 report that must include the findings of the assessment and
 232 address each of the following components:

- 233 (I) The sex offender's current legal status;
- 234 (II) The sex offender's history of adult charges with

235 | apparent sexual motivation;

236 | (III) The sex offender's history of adult charges without

237 | apparent sexual motivation;

238 | (IV) The sex offender's history of juvenile charges,

239 | whenever available;

240 | (V) The sex offender's offender treatment history,

241 | including a consultation from the sex offender's treating, or

242 | most recent treating, therapist;

243 | (VI) The sex offender's current mental status;

244 | (VII) The sex offender's mental health and substance abuse

245 | history as provided by the Department of Corrections;

246 | (VIII) The sex offender's personal, social, educational,

247 | and work history;

248 | (IX) The results of current psychological testing of the

249 | sex offender if determined necessary by the qualified

250 | practitioner;

251 | (X) A description of the proposed contact, including the

252 | location, frequency, duration, and supervisory arrangement;

253 | (XI) The child's preference and relative comfort level

254 | with the proposed contact, when age-appropriate;

255 | (XII) The parent's or legal guardian's preference

256 | regarding the proposed contact; and

257 | (XIII) The qualified practitioner's opinion, along with

258 | the basis for that opinion, as to whether the proposed contact

259 | would likely pose significant risk of emotional or physical harm

260 | to the child.

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The written report of the assessment must be given to the commission.

b. A recommendation made as a part of the risk-assessment report as to whether supervised contact with the child should be approved;

c. A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of the risk assessment. The commission may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact;

d. A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, and the child, when age appropriate, which details the acceptable conditions of contact between the sex offender and the child. The safety plan must be reviewed and approved by the Department of Corrections before being submitted to the commission; and

e. Evidence that the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the

287 | offender.

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289 | The commission may not appoint a person to conduct a risk
 290 | assessment and may not accept a risk assessment from a person
 291 | who has not demonstrated to the commission that he or she has
 292 | met the requirements of a qualified practitioner as defined in
 293 | this section.

294 | 6. If the victim was under age 18, a prohibition on
 295 | working for pay or as a volunteer at any school, child care
 296 | facility, park, playground, or other place where children
 297 | regularly congregate, as prescribed by the commission.

298 | 7. Unless otherwise indicated in the treatment plan
 299 | provided by a qualified practitioner in the sexual offender
 300 | treatment program, a prohibition on viewing, owning, or
 301 | possessing any obscene, pornographic, or sexually stimulating
 302 | visual or auditory material, including telephone, electronic
 303 | media, computer programs, or computer services that are relevant
 304 | to the offender's deviant behavior pattern.

305 | 8. Effective for a releasee whose crime is committed on or
 306 | after July 1, 2005, a prohibition on accessing the Internet or
 307 | other computer services until a qualified practitioner in the
 308 | offender's sex offender treatment program, after a risk
 309 | assessment is completed, approves and implements a safety plan
 310 | for the offender's accessing or using the Internet or other
 311 | computer services.

312 | 9. A requirement that the releasee must submit two

313 specimens of blood to the Department of Law Enforcement to be
 314 registered with the DNA database.

315 10. A requirement that the releasee make restitution to
 316 the victim, as determined by the sentencing court or the
 317 commission, for all necessary medical and related professional
 318 services relating to physical, psychiatric, and psychological
 319 care.

320 11. Submission to a warrantless search by the community
 321 control or probation officer of the probationer's or community
 322 controllee's person, residence, or vehicle.

323 (b) For a releasee whose crime was committed on or after
 324 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 325 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 326 conditional release supervision, in addition to any other
 327 provision of this subsection, the commission shall impose the
 328 following additional conditions of conditional release
 329 supervision:

330 1. As part of a treatment program, participation in a
 331 minimum of one annual polygraph examination to obtain
 332 information necessary for risk management and treatment and to
 333 reduce the sex offender's denial mechanisms. The polygraph
 334 examination must be conducted by a polygrapher who is a member
 335 of a national or state polygraph association and who is
 336 certified as a postconviction sex offender polygrapher, where
 337 available, and at the expense of the releasee. The results of
 338 the examination shall be provided to the releasee's probation

339 officer and qualified practitioner and may not be used as
 340 evidence in a hearing to prove that a violation of supervision
 341 has occurred.

342 2. Maintenance of a driving log and a prohibition against
 343 driving a motor vehicle alone without the prior approval of the
 344 supervising officer.

345 3. A prohibition against obtaining or using a post office
 346 box without the prior approval of the supervising officer.

347 4. If there was sexual contact, a submission to, at the
 348 releasee's expense, an HIV test with the results to be released
 349 to the victim or the victim's parent or guardian.

350 5. Electronic monitoring of any form when ordered by the
 351 commission. Any person who has been placed under supervision and
 352 is electronically monitored by the department must pay the
 353 department for the cost of the electronic monitoring service at
 354 a rate that may not exceed the full cost of the monitoring
 355 service. Funds collected under this subparagraph shall be
 356 deposited into the General Revenue Fund. The department may
 357 exempt a person from the payment of all or any part of the
 358 electronic monitoring service cost if the department finds that
 359 any of the factors listed in s. 948.09(3) exist.

360 (12)~~(8)~~ It is the finding of the Legislature that the
 361 population of offenders released from state prison into the
 362 community who meet the conditional release criteria poses the
 363 greatest threat to the public safety of the groups of offenders
 364 under community supervision. Therefore, the Department of

365 Corrections is to provide intensive supervision by experienced
 366 correctional probation officers to conditional release
 367 offenders. Subject to specific appropriation by the Legislature,
 368 caseloads may be restricted to a maximum of 40 conditional
 369 release offenders per officer to provide for enhanced public
 370 safety and to effectively monitor conditions of electronic
 371 monitoring or curfews, if so ordered by the commission.

372 (13)~~(9)~~ The commission shall adopt rules pursuant to ss.
 373 120.536(1) and 120.54 necessary to implement ~~the provisions of~~
 374 the Conditional Release Program Act.

375 (14)~~(10)~~ Effective for a releasee whose crime was
 376 committed on or after September 1, 2005, in violation of chapter
 377 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and
 378 the unlawful activity involved a victim who was 15 years of age
 379 or younger and the offender is 18 years of age or older or for a
 380 releasee who is designated as a sexual predator pursuant to s.
 381 775.21, in addition to any other provision of this section, the
 382 commission must order electronic monitoring for the duration of
 383 the releasee's supervision.

384 (15)~~(11)~~ Effective for a releasee whose crime was
 385 committed on or after October 1, 2008, and who has been found to
 386 have committed the crime for the purpose of benefiting,
 387 promoting, or furthering the interests of a criminal gang, the
 388 commission shall, in addition to any other conditions imposed,
 389 impose a condition prohibiting the releasee from knowingly
 390 associating with other criminal gang members or associates,

391 | except as authorized by law enforcement officials, prosecutorial
 392 | authorities, or the court, for the purpose of aiding in the
 393 | investigation of criminal activity.

394 | (16)~~(12)~~ In addition to all other conditions imposed, for
 395 | a releasee who is subject to conditional release for a crime
 396 | that was committed on or after May 26, 2010, and who has been
 397 | convicted at any time of committing, or attempting, soliciting,
 398 | or conspiring to commit, any of the criminal offenses listed in
 399 | s. 943.0435(1)(a)1.a.(I), or a similar offense in another
 400 | jurisdiction against a victim who was under 18 years of age at
 401 | the time of the offense, if the releasee has not received a
 402 | pardon for any felony or similar law of another jurisdiction
 403 | necessary for the operation of this subsection, if a conviction
 404 | of a felony or similar law of another jurisdiction necessary for
 405 | the operation of this subsection has not been set aside in any
 406 | postconviction proceeding, or if the releasee has not been
 407 | removed from the requirement to register as a sexual offender or
 408 | sexual predator pursuant to s. 943.04354, the commission must
 409 | impose the following conditions:

410 | (a) A prohibition on visiting schools, child care
 411 | facilities, parks, and playgrounds without prior approval from
 412 | the releasee's supervising officer. The commission may also
 413 | designate additional prohibited locations to protect a victim.
 414 | The prohibition ordered under this paragraph does not prohibit
 415 | the releasee from visiting a school, child care facility, park,
 416 | or playground for the sole purpose of attending a religious

417 service as defined in s. 775.0861 or picking up or dropping off
 418 the releasee's child or grandchild at a child care facility or
 419 school.

420 (b) A prohibition on distributing candy or other items to
 421 children on Halloween; wearing a Santa Claus costume, or other
 422 costume to appeal to children, on or preceding Christmas;
 423 wearing an Easter Bunny costume, or other costume to appeal to
 424 children, on or preceding Easter; entertaining at children's
 425 parties; or wearing a clown costume without prior approval from
 426 the commission.

427 Section 3. Subsection (1) of section 948.012, Florida
 428 Statutes, is amended, and subsection (5) is added to that
 429 section, to read:

430 948.012 Split sentence of probation or community control
 431 and imprisonment.—

432 (1) If ~~Whenever~~ punishment by imprisonment for a
 433 misdemeanor or a felony, except for a capital felony, is
 434 prescribed, the court, ~~in its discretion,~~ may, at the time of
 435 sentencing, impose a split sentence whereby the defendant is to
 436 be placed on probation or, with respect to any such felony, into
 437 community control upon completion of any specified period of
 438 such sentence which may include a term of years or less. In such
 439 case, the court shall stay and withhold the imposition of the
 440 remainder of sentence imposed upon the defendant and direct that
 441 the defendant be placed upon probation or into community control
 442 after serving such period as may be imposed by the court. Except

443 as provided in subsection (5), the period of probation or
 444 community control shall commence immediately upon the release of
 445 the defendant from incarceration, whether by parole or gain-time
 446 allowances.

447 (5) If a person who has been sentenced to a split sentence
 448 pursuant to subsection (1) is transferred to the custody of the
 449 Department of Children and Families pursuant to part V of
 450 chapter 394, the period of probation or community control is
 451 tolled until such person is no longer in the custody of the
 452 Department of Children and Families. This subsection applies to
 453 all sentences of probation or community control which begin on
 454 or after October 1, 2014, regardless of the date of the
 455 underlying offense.

456 Section 4. Paragraph (b) of subsection (3) of section
 457 775.21, Florida Statutes, is amended to read:

458 775.21 The Florida Sexual Predators Act.—

459 (3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

460 (b) The high level of threat that a sexual predator
 461 presents to the public safety, and the long-term effects
 462 suffered by victims of sex offenses, provide the state with
 463 sufficient justification to implement a strategy that includes:

464 1. Incarcerating sexual predators and maintaining adequate
 465 facilities to ensure that decisions to release sexual predators
 466 into the community are not made on the basis of inadequate
 467 space.

468 2. Providing for specialized supervision of sexual

469 predators who are in the community by specially trained
 470 probation officers with low caseloads, as described in ss.
 471 947.1405(11) ~~947.1405(7)~~ and 948.30. The sexual predator is
 472 subject to specified terms and conditions implemented at
 473 sentencing or at the time of release from incarceration, with a
 474 requirement that those who are financially able must pay all or
 475 part of the costs of supervision.

476 3. Requiring the registration of sexual predators, with a
 477 requirement that complete and accurate information be maintained
 478 and accessible for use by law enforcement authorities,
 479 communities, and the public.

480 4. Providing for community and public notification
 481 concerning the presence of sexual predators.

482 5. Prohibiting sexual predators from working with
 483 children, either for compensation or as a volunteer.

484 Section 5. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7019 PCB CRJS 14-06 Civil Commitment of Sexually Violent Predators
SPONSOR(S): Criminal Justice Subcommittee, Hutson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee		McAuliffe	Leznoff
2) Judiciary Committee			

SUMMARY ANALYSIS

In 1998, the Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Ryce Act. Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment as to whether the offender meets the clinical definition of a sexually violent predator. If a judge determines that probable cause exists to believe an offender is a sexually violent predator, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. After trial, those civilly committed as sexually violent predators are housed for treatment at FCCC, and remain confined until the court determines that they are no longer a threat to public safety.

Currently, only the Department of Corrections, the Department of Juvenile Justice, and DCF are permitted to refer persons to DCF to initiate civil commitment proceedings. There is not a mechanism by which persons sentenced to local detention centers (jails) can be referred.

The bill creates a process by which persons sentenced to a term of imprisonment in a jail can be referred to DCF for civil commitment. Specifically, the bill creates s. 394.9125, F.S., which authorizes a state attorney to refer a person who meets all of the following criteria to DCF for civil commitment proceedings:

- A person who is required to register as a sexual offender;
- A person who has previously been convicted of a sexually violent offense; and
- A person who has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense except for a violation of ss. 316.193, 322.34, and 832.05, F.S.

The bill also provides that if the release of a person who has been convicted of a sexually violent offense occurs due to the following reasons, the state attorney may file a petition with the circuit court within 120 hours of such person's release requesting the court to order such person into DCF's custody for purposes of initiating civil commitment proceedings:

- Part V of ch. 394, F.S., required that the person be referred for civil commitment proceedings prior to such person's release, but the person was not referred due to mistake, oversight, or intentional act; or
- The person was referred for civil commitment proceedings but, through mistake, oversight, or intentional act, the person was released rather than transferred to the custody of the department.

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have an indeterminate impact on the number of offenders committed to DCF, and no impact on state prison beds. The bill may have a fiscal impact on DCF because it broadens the pool of individuals that may be referred to DCF for civil commitment. However, the precise impact of the bill is indeterminate because it is unknown how many people state attorneys may refer. See fiscal section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexually Violent Predator Program - Background

A sexually violent predator is a person who has been convicted of a sexually violent offense¹ and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁵ Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team (MDT) as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.⁷

Those civilly committed as sexually violent predators are housed for treatment at FCCC.⁸ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete. However, persons committed to the state under the Ryce Act must be confined until the court determines that they are no longer a threat to public safety.⁹

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or her to be released. If the court believes there is probable cause, a trial is held at which the state

¹ Section 394.912(9), F.S., defines the term "sexually violent offense" as:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery; or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or
- Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

² Section 394.912(10), F.S.

³ Part V of ch. 394, F.S.

⁴ *Conditional Release of Sexually Violent Predators through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011 (on file with the Criminal Justice Subcommittee).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ FCCC is a 720-bed, physically secure facility located in Arcadia, FL, and operated by the GEO Group. *Id.*

⁹ Section 394.918, F.S.

attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹⁰

Referral to DCF for Civil Commitment

As noted above, persons convicted of a sexually violent offense who are nearing the end of their criminal sentence must be referred to DCF for assessment as to whether the person meets the clinical definition of a sexually violent predator. Currently, only the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and DCF are permitted to refer such persons to DCF for civil commitment proceedings. There is not a mechanism by which persons sentenced to local detention centers (jails) can be referred.

Effect of the Bill

The bill creates a process by which persons sentenced to jail can be referred to DCF for civil commitment. Specifically, the bill creates s. 394.9125, F.S., which authorizes a state attorney to refer a person who meets all of the following criteria to DCF for civil commitment proceedings:

- A person who is required to register as a sexual offender pursuant to s. 943.0435, F.S.;
- A person who has previously been convicted of a sexually violent offense as defined in s. 394.912(9)(a)-(h), F.S.; and
- A person who has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense except for a violation of ss. 316.193,¹¹ 322.34,¹² and 832.05, F.S.¹³

A state attorney who refers a person for civil commitment must notify the jail to which the person has been sentenced within one week of the referral being made.

A jail that has custody of a person that has been referred by a state attorney must, at least 180 days prior to the anticipated release of the person, give written notice to the MDT¹⁴ of such person's upcoming release. If the person is confined in the jail for less than 180 days, the jail must provide notice to the MDT as soon as practicable.

The bill amends the definitions of the terms "agency with jurisdiction," "sexually violent offense," and "total confinement" to conform with the above-described referral process and ensure that all of the provisions of the Ryce Act are applicable to the newly-created referral process.

Immediate Release from Confinement

Section 394.913, F.S., requires DOC, DJJ, and DCF, to notify the MDT of the release of a person convicted of a sexually violent offense within specified timeframes. For example, DOC must notify the MDT that a person convicted of a sexually violent offense is being released within 545 days of such person's release.¹⁵

On occasion, a person convicted of a sexually violent offense is released without much notice, which may prevent DOC, DJJ, and DCF from complying with the notice timeframes discussed above. In such instances, the provisions of s. 394.9135, F.S., take effect, which requires DOC, DJJ, and DCF, to immediately transfer a person convicted of a sexually violent offense to the custody of DCF for civil commitment if the person's release becomes immediate for any reason. However, even with this "back-up" provision, there are still instances in which a person convicted of a sexually violent offense may be released without being referred to DOC, DJJ, or DCF. For example, a DOC inmate who has been convicted of a sexually violent offense may leave prison to attend a court hearing and, as a result of the hearing, have his or her release date changed. In such cases, the inmate may be released at the

¹⁰ *Id.*

¹¹ Relating to driving under the influence.

¹² Relating to driving while license suspended, revoked, canceled, or disqualified.

¹³ Relating to passing worthless checks.

¹⁴ And the state attorney of the circuit where the person was last convicted of a sexually violent offense. Section 394.913(1), F.S.

¹⁵ Section 394.913(1)(a), F.S.

conclusion of the hearing and never return to prison. These situations are problematic because current law prohibits a person from being referred for civil commitment after release.¹⁶

Effect of the Bill

The bill addresses the above-described scenario by specifying that if the release of a person who has been convicted of a sexually violent offense occurs due to the following reasons, the state attorney may file a petition with the circuit court within 120 hours of the person's release requesting the court to order such person into DCF's custody for purposes of initiating civil commitment proceedings:

- Part V of ch. 394, F.S., required that the person be referred for civil commitment proceedings prior to such person's release, but the person was not referred due to mistake, oversight, or intentional act; or
- The person was referred for civil commitment proceedings but, through mistake, oversight, or intentional act, the person was released rather than transferred to the custody of the department.

If the judge determines that there is probable cause to believe that the person was released due to the reasons specified above, the judge must order that the person be taken into custody and delivered to the custody of DCF for civil commitment proceedings. The MDT must assess the person within 72 hours after transfer and, if determined that the person meets criteria, provide the state attorney with the assessment and recommendation. The MDT must release the person if the MDT determines the person does not meet the definition of a sexually violent predator.

Timeframes - Notice to the State Attorney

Once the MDT receives notice from DOC, DJJ, or DCF that a person convicted of a sexually violent offense is nearing release, the MDT must, within 180 days after receiving notice, assess the person to determine whether he or she meets the clinical definition of a sexually violent predator. The MDT's assessment and recommendation must be provided to the state attorney. In cases where an assessment and recommendation have not been completed at least 365 days before a person's release, DCF must prioritize the assessment based upon the person's release date.

Effect of the Bill

The bill eliminates the requirement that the MDT provide an assessment and recommendation within 180 days of receiving notice that a person convicted of a sexually violent offense is nearing release. Instead, the bill permits the MDT to prioritize all assessments and recommendations based upon the person's release date.

Post-Commitment Probable Cause Hearings

Section 394.918, F.S., currently requires persons committed as a sexually violent predator to have an examination of his or her mental condition at least annually. The results of the examination must be provided to the court, which must review the person's status.¹⁷ If the person files a petition for release, the court must hold a limited hearing to determine if there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged.¹⁸ Currently, caselaw prohibits the court from considering evidence presented by the state attorney at the probable cause hearing.¹⁹

Effect of the Bill

The bill specifies that both the petitioner and the respondent may present evidence that the court may weigh and consider at a post-commitment probable cause hearing. The bill also authorizes the petitioner to attend the probable cause hearing.

¹⁶ See, e.g., *Larimore v. State*, 2 So.3d 101 (Fla. 2008). Also see, ss. 394.913 and 394.9135, F.S.

¹⁷ Section 394.918(1), F.S.

¹⁸ Section 394.918(3), F.S.

¹⁹ See *Spivey v. State*, 100 So.3d 1254 (Fla. 5th DCA 2012); *In re Commitment of Allen*, 927 So.2d 1070, 1074 (Fla. 2d DCA 2006); and *Westerheide v. State*, 888 So.2d 702, 706 (Fla. 5th DCA 2004).

B. SECTION DIRECTORY:

Section 1. Amends s. 394.912, F.S., relating to definitions.

Section 2. Creates s. 394.9125, F.S., relating to state attorney; authority to refer a person for civil commitment.

Section 3. Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.

Section 4. Amends s. 394.9135, F.S., relating to immediate release from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.

Section 5. Amends s. 394.9151, F.S., relating to contract authority.

Section 6. Amends s. 394.917, F.S., relating to determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.

Section 7. Amends s. 394.918, F.S., relating to examinations; notice; court hearings for release of committed persons; burden of proof.

Section 8. Amends s. 394.9215, F.S., relating to right to habeas corpus.

Section 9. Amends s. 394.929, F.S., relating to program costs.

Section 10. Amends s. 394.930, F.S., relating to authority to adopt rules.

Section 11. Amends s. 394.931, F.S., relating to quarterly reports.

Section 12. Provides an effective date of July 1, 2014.

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 met on January 30, 2014 and determined this bill will have an indeterminate impact on the number of offenders committed to DCF and no impact on state prison beds.

The bill may have a negative fiscal impact on DCF because it authorizes a state attorney to refer a person who meets specified criteria to DCF for civil commitment proceedings. This has the effect of broadening the pool of individuals that may be referred to DCF for civil commitment.

According to DCF, each person referred costs approximately \$700 to review.²⁰ Roughly 7% of those referred require a face-to-face evaluation, which costs approximately \$2,000.²¹ Ultimately,

²⁰ E-mail dated December 20, 2014, from Kristin Kanner, Director of DCF's Sexually Violent Predator Program (on file with the Criminal Justice Subcommittee).

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DATE: 2/11/2014

approximately 3% of those referred to DCF are recommended for commitment housed at FCCC, which has a daily bed rate of approximately \$99.²²

DCF will incur the \$700 initial review cost for each additional person referred. The additional costs described above would only be incurred if the person, after the initial review, required a face-to-face evaluation or was housed at FCCC. However, the precise impact of the bill is indeterminate because it is unknown how many people state attorneys may refer.

The provisions authorizing a state attorney to refer certain persons sentenced to jail to DCF for civil commitment proceedings may result in an increased workload for state attorneys. However, these provisions simply authorize a state attorney to make a referral – they do not mandate it. Since these provisions are discretionary, the workload impact is estimated to be minimal.

The bill also authorizes both the petitioner and the respondent to present evidence that the court may weigh and consider at a post-commitment probable cause hearing. This may have a negative fiscal impact on state attorneys, but will likely result in fewer subsequent continued commitment trials, which would have a positive fiscal impact.

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have an indeterminate impact on the number of offenders committed to DCF and no impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Legislature modeled the Ryce Act after Kansas' statutory scheme. In *Kansas v. Hendricks*, the United States Supreme Court held that Kansas's Sexually Violent Predator Act "comports with due process requirements and neither runs afoul of double jeopardy principles nor

²¹ *Id.*

²² *Id.*

constitutes an exercise in impermissible ex post facto lawmaking.”²³ The Florida Supreme Court likewise found the Ryce Act to be constitutional in *Westerheide v. State*.²⁴

Although they upheld the constitutionality of the Ryce Act, the Florida Supreme Court has repeatedly emphasized the importance of procedural safeguards and time constraints within the Ryce Act to ensure that an individual's constitutional rights are protected. For example, *Westerheide* noted the “range of procedural safeguards” provided by the Act, including the assistance of counsel and mental health professionals, the right to a jury trial, the right to appeal, at least an annual review of the person's condition, the right to petition for release, and the State's burden of proving by clear and convincing evidence that the person requires commitment.²⁵

The bill expands the instances in which a person may be referred to DCF for civil commitment, permits civil commitment proceedings to be commenced upon persons who are no longer in confinement (albeit in very limited instances), and allows both the petitioner and the respondent to present evidence that the court may weigh and consider at a post-commitment probable cause hearing (while authorizing the petitioner to attend such hearings). These modifications to the Ryce Act could be challenged as violating one's due process²⁶ rights.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²³ 521 U.S. 346, 371 (1997).

²⁴ 831 So.2d 93 (Fla. 2002).

²⁵ *Id.* at 105.

²⁶ The due process clause (found in the Fifth Amendment of the United States Constitution and applied to states through the Fourteenth Amendment, and in Article I, Section 9 of the Florida Constitution) requires a state to provide due process of law before depriving any person of life, liberty or property.

HB 7019

2014

1 A bill to be entitled

2 An act relating to civil commitment of sexually
3 violent predators; amending s. 394.912, F.S.; revising
4 definitions; creating s. 394.9125, F.S.; authorizing a
5 state attorney to refer certain persons for civil
6 commitment; requiring the state attorney to notify
7 county and municipal jails of a referral within a
8 specified period; amending s. 394.913, F.S.; requiring
9 county and municipal jails to give notice of specified
10 persons' release to the multidisciplinary team within
11 certain periods; requiring the Department of Children
12 and Families to prioritize the assessment of a person
13 referred for civil commitment based upon the person's
14 release date; amending s. 394.9135, F.S.; providing a
15 process whereby civil commitment proceedings may be
16 commenced upon certain released persons; amending ss.
17 394.9151 and 394.917, F.S.; correcting references to
18 the Department of Children and Families; amending s.
19 394.918, F.S., permitting the petitioner and
20 respondent to present evidence at a civil commitment
21 probable cause hearing; amending ss. 394.9215,
22 394.929, 394.930, and 394.931, F.S.; correcting
23 references to the Department of Children and Families;
24 deleting obsolete provisions; providing an effective
25 date.
26

27 Be It Enacted by the Legislature of the State of Florida:

28

29 Section 1. Subsections (1), (3), (7), and (11) of section
 30 394.912, Florida Statutes, are amended, and paragraph (i) is
 31 added to subsection (9) of that section, to read:

32 394.912 Definitions.—As used in this part, the term:

33 (1) "Agency with jurisdiction" means the entity ~~agency~~
 34 that releases, upon lawful order or authority, a person who is
 35 serving a sentence in the custody of the Department of
 36 Corrections, a person who was adjudicated delinquent and is
 37 committed to the custody of the Department of Juvenile Justice,
 38 ~~or~~ a person who was involuntarily committed to the custody of
 39 the Department of Children and Families ~~Family Services~~ upon an
 40 adjudication of not guilty by reason of insanity, or a person
 41 who is serving a sentence in a county or municipal jail for a
 42 sexually violent offense as defined in s. 394.912(9)(i).

43 (3) "Department" means the Department of Children and
 44 Families ~~Family Services~~.

45 (7) "Secretary" means the secretary of the Department of
 46 Children and Families ~~Family Services~~.

47 (9) "Sexually violent offense" means:

48 (i) Any criminal offense in which the state attorney
 49 refers a person to the department for civil commitment
 50 proceedings pursuant to s. 394.9125.

51 (11) "Total confinement" means that the person is
 52 currently being held in any physically secure facility being

53 | operated or contractually operated for the Department of
 54 | Corrections, the Department of Juvenile Justice, or the
 55 | Department of Children and Families ~~Family Services~~. A person
 56 | shall also be deemed to be in total confinement for
 57 | applicability of provisions under this part if the person is
 58 | serving an incarcerative sentence under the custody of the
 59 | Department of Corrections or the Department of Juvenile Justice
 60 | and is being held in any other secure facility for any reason. A
 61 | person shall also be deemed to be in total confinement if the
 62 | person is serving a sentence in a county or municipal jail for a
 63 | sexually violent offense as defined in s. 394.912(9)(i).

64 | Section 2. Section 394.9125, Florida Statutes, is created
 65 | to read:

66 | 394.9125 State attorney; authority to refer a person for
 67 | civil commitment.-

68 | (1) A state attorney may refer a person to the department
 69 | for civil commitment proceedings if the person:

70 | (a) Is required to register as a sexual offender pursuant
 71 | to s. 943.0435;

72 | (b) Has previously been convicted of a sexually violent
 73 | offense as defined in s. 394.912(9)(a)-(h); and

74 | (c) Has been sentenced to a term of imprisonment in a
 75 | county or municipal jail for any criminal offense except for
 76 | violations of ss. 316.193, 322.34, and 832.05.

77 | (2) A state attorney who refers a person for civil
 78 | commitment pursuant to subsection (1) must notify the county or

79 municipal jail to which the person has been sentenced within 1
 80 week of such referral being made.

81 Section 3. Subsection (1) and paragraph (e) of subsection
 82 (3) of section 394.913, Florida Statutes, are amended to read:

83 394.913 Notice to state attorney and multidisciplinary
 84 team of release of sexually violent predator; establishing
 85 multidisciplinary teams; information to be provided to
 86 multidisciplinary teams.-

87 (1) The agency with jurisdiction over a person who has
 88 been convicted of a sexually violent offense shall give written
 89 notice to the multidisciplinary team, and a copy to the state
 90 attorney of the circuit where that person was last convicted of
 91 a sexually violent offense. If the person has never been
 92 convicted of a sexually violent offense in this state but has
 93 been convicted of a sexually violent offense in another state or
 94 in federal court, the agency with jurisdiction shall give
 95 written notice to the multidisciplinary team and a copy to the
 96 state attorney of the circuit where the person was last
 97 convicted of any offense in this state. If the person is being
 98 confined in this state pursuant to interstate compact and has a
 99 prior or current conviction for a sexually violent offense, the
 100 agency with jurisdiction shall give written notice to the
 101 multidisciplinary team and a copy to the state attorney of the
 102 circuit where the person plans to reside upon release or, if no
 103 residence in this state is planned, the state attorney in the
 104 circuit where the facility from which the person to be released

105 is located. Except as provided in s. 394.9135, the written
 106 notice must be given:

107 (a) At least 545 days before ~~prior to~~ the anticipated
 108 release from total confinement of a person serving a sentence in
 109 the custody of the Department of Corrections, except that in the
 110 case of persons who are totally confined for a period of less
 111 than 545 days, written notice must be given as soon as
 112 practicable;

113 (b) At least 180 days before ~~prior to~~ the anticipated
 114 release from residential commitment of a person committed to the
 115 custody of the Department of Juvenile Justice, except that in
 116 the case of persons who are committed to low or moderate risk,
 117 written notice must be given as soon as practicable; ~~or~~

118 (c) At least 180 days before ~~prior to~~ the anticipated
 119 hearing regarding possible release of a person committed to the
 120 custody of the department who has been found not guilty by
 121 reason of insanity or mental incapacity of a sexually violent
 122 offense; or

123 (d) At least 180 days before the anticipated release from
 124 total confinement of a person serving a sentence in a county or
 125 municipal jail; except that in the case of persons who are
 126 totally confined for a period of less than 180 days, written
 127 notice must be given as soon as practicable.

128 (3)

129 (e) The department ~~1. Within 180 days after receiving~~
 130 ~~notice, there shall~~ conduct ~~be~~ a written assessment as to

131 whether the person meets the definition of a sexually violent
 132 predator and provide a written recommendation, including the
 133 written report of the multidisciplinary team, ~~which shall be~~
 134 ~~provided to the state attorney. The written recommendation shall~~
 135 ~~be provided by the Department of Children and Family Services~~
 136 ~~and shall include the written report of the multidisciplinary~~
 137 ~~team.~~

138 ~~2. Notwithstanding subparagraph 1., in the case of a~~
 139 ~~person for whom the written assessment and recommendation has~~
 140 ~~not been completed at least 365 days before his or her release~~
 141 ~~from total confinement,~~ The department shall prioritize the
 142 assessment of that person based upon the person's release date.

143 Section 4. Subsections (1) and (2) of section 394.9135,
 144 Florida Statutes, are amended to read:

145 394.9135 Immediate releases from total confinement;
 146 transfer of person to department; time limitations on
 147 assessment, notification, and filing petition to hold in
 148 custody; filing petition after release.-

149 (1) (a) If the anticipated release from total confinement
 150 of a person who has been convicted of a sexually violent offense
 151 becomes immediate for any reason, the agency with jurisdiction
 152 shall upon immediate release from total confinement transfer
 153 that person to the custody of the department ~~of Children and~~
 154 ~~Family Services~~ to be held in an appropriate secure facility.

155 (b) If the release from total confinement of a person who
 156 has been convicted of a sexually violent offense occurs due to a

157 reason specified in subparagraph 1. or subparagraph 2., the
 158 state attorney may file a petition with the circuit court within
 159 120 hours after such person's release requesting the court to
 160 order such person into the department's custody for purposes of
 161 initiating civil commitment proceedings. The petition must
 162 allege that:

163 1. Part V of chapter 394 requires that the person be
 164 referred for civil commitment proceedings before the person's
 165 release, but the person was not referred due to mistake,
 166 oversight, or intentional act; or

167 2. The person was referred for civil commitment
 168 proceedings but, through mistake, oversight, or intentional act,
 169 the person was released rather than transferred to the custody
 170 of the department.

171
 172 If the judge determines that there is probable cause to believe
 173 that the person was released due to the reasons specified in
 174 subparagraph 1. or subparagraph 2., the judge shall order that
 175 the person be taken into custody and delivered to the custody of
 176 the department for civil commitment proceedings.

177 (2) Within 72 hours after transfer pursuant to paragraph
 178 (1)(a) or receipt into the department's custody pursuant to
 179 paragraph (1)(b), the multidisciplinary team shall assess
 180 whether the person meets the definition of a sexually violent
 181 predator. If the multidisciplinary team determines that the
 182 person does not meet the definition of a sexually violent

183 predator, that person shall be immediately released. If the
 184 multidisciplinary team determines that the person meets the
 185 definition of a sexually violent predator, the team shall
 186 provide the state attorney, as designated by s. 394.913, with
 187 its written assessment and recommendation within the 72-hour
 188 period or, if the 72-hour period ends after 5 p.m. on a working
 189 day or on a weekend or holiday, within the next working day
 190 thereafter.

191 Section 5. Section 394.9151, Florida Statutes, is amended
 192 to read:

193 394.9151 Contract authority.—The department ~~of Children~~
 194 ~~and Family Services~~ may contract with a private entity or state
 195 agency for use of and operation of facilities to comply with the
 196 requirements of this part act. The department ~~of Children and~~
 197 ~~Family Services~~ may also contract with the Department of
 198 Management Services to issue a request for proposals and monitor
 199 contract compliance for these services.

200 Section 6. Subsection (2) of section 394.917, Florida
 201 Statutes, is amended to read:

202 394.917 Determination; commitment procedure; mistrials;
 203 housing; counsel and costs in indigent appellate cases.—

204 (2) If the court or jury determines that the person is a
 205 sexually violent predator, upon the expiration of the
 206 incarcerative portion of all criminal sentences and disposition
 207 of any detainers, the person shall be committed to the custody
 208 of the department ~~of Children and Family Services~~ for control,

209 care, and treatment until such time as the person's mental
 210 abnormality or personality disorder has so changed that it is
 211 safe for the person to be at large. At all times, persons who
 212 are detained or committed under this part shall be kept in a
 213 secure facility segregated from patients of the department who
 214 are not detained or committed under this part.

215 Section 7. Subsection (3) of section 394.918, Florida
 216 Statutes, is amended to read:

217 394.918 Examinations; notice; court hearings for release
 218 of committed persons; burden of proof.-

219 (3) The court shall hold a limited hearing to determine
 220 whether there is probable cause to believe that the person's
 221 condition has so changed that it is safe for the person to be at
 222 large and that the person will not engage in acts of sexual
 223 violence if discharged. The person has the right to be
 224 represented by counsel at the probable cause hearing, and the
 225 right ~~but the person is not entitled~~ to be present. Both the
 226 petitioner and the respondent may present evidence that the
 227 court may weigh and consider. If the court determines that there
 228 is probable cause to believe it is safe to release the person,
 229 the court shall set a trial before the court on the issue.

230 Section 8. Paragraph (b) of subsection (1) of section
 231 394.9215, Florida Statutes, is amended to read:

232 394.9215 Right to habeas corpus.-

233 (1)

234 (b) Upon filing a legally sufficient petition stating a

235 | prima facie case under paragraph (a), the court may direct the
 236 | department ~~of Children and Family Services~~ to file a response.
 237 | If necessary, the court may conduct an evidentiary proceeding
 238 | and issue an order to correct a violation of state or federal
 239 | rights found to exist by the court. A final order entered under
 240 | this section may be appealed to the district court of appeal. A
 241 | nonfinal order may be appealed to the extent provided by the
 242 | Florida Rules of Appellate Procedure. An appeal by the
 243 | department shall stay the trial court's order until disposition
 244 | of the appeal.

245 | Section 9. Section 394.929, Florida Statutes, is amended
 246 | to read:

247 | 394.929 Program costs.—The department ~~of Children and~~
 248 | ~~Family Services~~ is responsible for all costs relating to the
 249 | evaluation and treatment of persons committed to the
 250 | department's custody as sexually violent predators. A county is
 251 | not obligated to fund costs for psychological examinations,
 252 | expert witnesses, court-appointed counsel, or other costs
 253 | required by this part. Other costs for psychological
 254 | examinations, expert witnesses, and court-appointed counsel
 255 | required by this part shall be paid from state funds
 256 | appropriated by general law.

257 | Section 10. Section 394.930, Florida Statutes, is amended
 258 | to read:

259 | 394.930 Authority to adopt rules.—The department ~~of~~
 260 | ~~Children and Family Services~~ shall adopt rules for:

261 (1) Procedures that must be followed by members of the
 262 multidisciplinary teams when assessing and evaluating persons
 263 subject to this part.+

264 (2) Education and training requirements for members of the
 265 multidisciplinary teams and professionals who assess and
 266 evaluate persons under this part.+

267 (3) The criteria that must exist in order for a
 268 multidisciplinary team to recommend to a state attorney that a
 269 petition should be filed to involuntarily commit a person under
 270 this part. The criteria shall include, but are not limited to,
 271 whether:

272 (a) The person has a propensity to engage in future acts
 273 of sexual violence.+

274 (b) The person should be placed in a secure, residential
 275 facility.+~~and~~

276 (c) The person needs long-term treatment and care.

277 (4) The designation of secure facilities for sexually
 278 violent predators who are subject to involuntary commitment
 279 under this part.+

280 (5) The components of the basic treatment plan for all
 281 committed persons under this part.+

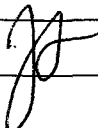
282 (6) The protocol to inform a person that he or she is
 283 being examined to determine whether he or she is a sexually
 284 violent predator under this part.

285 Section 11. Section 394.931, Florida Statutes, is amended
 286 to read:

287 394.931 Quarterly reports. ~~Beginning July 1, 1999,~~ The
 288 Department of Corrections shall collect information and compile
 289 quarterly reports with statistics profiling inmates released the
 290 previous quarter who fit the criteria and were referred to the
 291 Department of Children and Families ~~Family Services~~ pursuant to
 292 this part act. ~~The quarterly reports must be produced beginning~~
 293 ~~October 1, 1999.~~ At a minimum, the information that must be
 294 collected and compiled for inclusion in the reports includes:
 295 whether the qualifying offense was the current offense or the
 296 prior offense; the most serious sexual offense; the total number
 297 of distinct victims of the sexual offense; whether the victim
 298 was known to the offender; whether the sexual act was
 299 consensual; whether the sexual act involved multiple victims;
 300 whether direct violence was involved in the sexual offense; the
 301 age of each victim at the time of the offense; the age of the
 302 offender at the time of the first sexual offense; whether a
 303 weapon was used; length of time since the most recent sexual
 304 offense; and the total number of prior and current sexual-
 305 offense convictions. In addition, the Department of Children and
 306 Families ~~Family Services~~ shall implement a long-term study to
 307 determine the overall efficacy of ~~the provisions of~~ this part.
 308 Section 12. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 PCB HFS 14-01 Sexually Violent Predators
SPONSOR(S): Healthy Families Subcommittee, Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Healthy Families Subcommittee	11 Y, 0 N, As CS	McElroy	Brazzell
1) Appropriations Committee		Fontaine WSF	Leznoff 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 7021 makes statutory changes to the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators. The Jimmy Ryce Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment through the Sexually Violent Predator Program (SVPP). The program is provided by the Florida Civil Commitment Center (FCCC) as administered by the Department of Children and Families (DCF).

The bill amends s. 394.913(3)(b), F.S., to require the clinicians on the DCF's multidisciplinary team (MDT) who assess, evaluate, and recommend persons for civil commitment to have experience in or relevant to evaluating or treating persons with mental abnormalities. The bill requires DCF to provide annual training on the civil commitment process to all MDT members and limits the standard contract term for MDT members retained on a contractual basis to one year.

The bill amends s. 394.913(3)(d), F.S., to require MDT members to review all available information, including information from the referring agency and clinical evaluations, prior to making its final determination and recommendation on whether a person meets the definition of a sexually violent predator. The bill clarifies the MDT's authority to conduct clinical evaluations and requires a second evaluation when any MDT member disagrees with the conclusion of the first clinical evaluation. The bill also allows the MDT to consult with law enforcement agencies and victim advocates during the assessment and evaluation process.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review, if the person has received a clinical evaluation and the MDT proposes to recommend that the person does not meet the definition of a sexually violent predator. If the state attorney questions the negative recommendation, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

The bill grants the state attorney authority to file a petition to civilly commit a person as a sexually violent predator even in cases in which the MDT finds that the person does *not* meet the definition of a sexually violent predator and recommends that a petition not be filed. Filing a petition under this scenario is currently prohibited by case law.

The bill provides specific authority to DCF to make rules related to the procedures and requirements for selecting, contracting with, providing routine feedback to, and evaluating contracted members of the multidisciplinary team.

The fiscal impact to DCF is \$104,000 and can be absorbed within existing department resources. The fiscal impact to the FCCC is indeterminate.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Jimmy Ryce Act

On September 11, 1995, nine-year-old Samuel James “Jimmy” Ryce was abducted at gunpoint as he was walking home from his school bus stop. He was sodomized and later murdered as he was attempting to escape his abductor. The abductor was convicted of Jimmy’s kidnapping, sexual assault, and murder on September 12, 1998.¹

In response to this tragedy, Jimmy’s parents, Don and Claudine Ryce, lobbied for legislation that would protect society from the criminal acts of sexually violent predators. This goal was achieved on May 19, 1998, when the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act (the “Act”) was signed into law. Specifically, the Act provides for the long-term control, care, and treatment of sexually violent predators through involuntary civil commitment.

The Act places sexually violent predators in the custody and control of the Department of Children and Families (DCF). DCF delegates the responsibility for the control, treatment, and care of these individuals to its Sexually Violent Predators Program. Recently, a media outlet raised concerns about the enforcement of the Act, as well as certain policy decisions of the Sexually Violent Predators Program.² In response, the Act and Sexually Violent Predator Program have been reevaluated to ensure the purpose and intent of the Act are being achieved.

Purpose and Constitutionality

The Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment.³ The Act defines “sexually violent predators” as:

1. Any person who has been convicted of a sexually violent offense; and
2. Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.⁴

Sexually violent predators represent a small but extremely dangerous percentage of the sexual offender population. These individuals are a clear and present danger to the public due to their mental abnormalities or personality disorders. These conditions cannot be readily addressed through existing mental illness treatment modalities due to the antisocial personality features of these individuals.⁵ Thus, the use of civil commitment under the Baker Act is precluded as short-term care and treatment is ineffective. The Act addresses these issues by providing long-term care and treatment for sexually violent predators through involuntary civil commitment. This civil commitment continues until such time as the mental abnormality or personality disorder has been resolved such that these individuals no longer pose a menace to society. In this manner both goals of the Act are accomplished.

¹ Jimmy Ryce’s abductor is currently scheduled to be executed on February 12, 2014.

² *Sex Predators Unleashed*, Sun Sentinel, Sally Kestin and Dana Williams, August 18, 2013.

³ Twenty states and the District of Columbia have enacted sexual offender civil commitment laws.

⁴ S. 394.912(10), F. S. “Mental abnormality” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses. S. 394.912(5), F. S.

⁵ S. 394.10, F.S.

The U.S. and Florida Supreme Courts have upheld the constitutionality of involuntary civil commitment of sexually violent predators. In 1994, Kansas enacted its Sexually Violent Predator Act which permits involuntary civil commitment when there is a finding that a person suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence.⁶ Shortly after enactment the constitutionality of the Act was challenged on due process, double jeopardy, and ex post facto grounds in Kansas v. Hendrix.⁷ The Court acknowledged that a person's substantive due process rights are violated when dangerousness is the sole factor used to justify indefinite involuntary commitment. However, the Court held that the Kansas Act did not violate due process because it coupled the dangerousness requirement with a mental abnormality requirement.⁸ The Court also held that ex post facto and double jeopardy were inapplicable because the Kansas Act was neither criminal nor punitive in nature.⁹

The Jimmy Ryce Act was modeled after the Kansas Act. In 2002, the Florida Supreme Court, in Westerheide v. State, held that the Act was constitutional.¹⁰

Sexually Violent Predator Determination

The Act requires both a clinical and judicial determination that a person meets the criteria of a "sexually violent predator" prior to his or her involuntary civil commitment. The clinical determination is conducted by licensed psychologists and psychiatrists. If a clinical determination is established and it is recommended that a petition be filed, the matter is forwarded to the state attorney, who may then proceed with the judicial determination.

Clinical Determination

The process of determining whether a person meets sexually violent predator criteria begins with the clinical determination. The clinical determination is a three-step process consisting of referral, evaluation and recommendation. The referral is made by an agency with jurisdiction over the person while the evaluation and recommendation are performed by DCF employees and contractors.

Referral

The clinical evaluation begins with the referral of a person by an agency with jurisdiction.¹¹ Under the Jimmy Ryce Act the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and the Department of Children and Families (DCF) are deemed to be agencies with jurisdiction.¹² These agencies are required to provide written notice (known as a "referral") to DCF and the state attorney of the circuit where that person was last convicted of a sexually violent offense¹³ prior to the release of that person from total confinement.¹⁴ DCF

⁶ Chapter 59, Article 29a, Kansas Statutes.

⁷ Kansas v. Hendrix, 521 U.S. 346 (U.S. S.Ct. 1997).

⁸ *Id* at 358; Mental abnormality is a clinical determination which, in cases of involuntary civil commitment, is later confirmed through a judicial determination.

⁹ *Id* at 361 and 369

¹⁰ Westerheide v. State, 831 So.2d 93 (Fla. 2002).

¹¹ DCF receives approximately 3,000 to 3,500 referrals per year.

¹² S. 394.912(1), F.S.

¹³ Pursuant to s. 394.912(9), F.S., "sexually violent offense" means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

receives 93.5% of its referrals from DOC with DJJ and DCF contributing 3.5% and 3% respectively.¹⁵ The referring agency must provide DCF with the following information:

- The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history;
- The person's criminal history, including police reports, victim statements, presentence investigation reports, post-sentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents or indicating whether the criminal incidents included sexual acts or were sexually motivated;
- Mental health, mental status, and medical records, including all clinical records and notes concerning the person;
- Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the DJJ, copies of the most recent performance plan and performance summary; and
- If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.¹⁶

Evaluation

A multidisciplinary team (MDT) is responsible for the evaluation and clinical determination of whether a referred person meets criteria for a sexually violent predator.¹⁷ The MDT is established by the Secretary of DCF or his or her designee.¹⁸ Each team must include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist.¹⁹ The evaluation is a multi-tiered process designed to eliminate from the referral pool individuals who do not meet criteria while accurately identifying sexually violent predators.

The evaluation begins with documentation compilation by a reviewer. The reviewer (generally an individual with a master's degree in social work or psychology) is a DCF employee tasked with compiling and summarizing all records and information regarding a particular individual. The reviewer does not evaluate or assess any of the documentation he or she compiles. Instead, once the information is compiled, the reviewer forwards it to screeners for evaluation.

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

¹⁴ S. 394.913(1). The Department of Corrections (DOC) must provide notice at least 545 days prior to the release of a person whereas the Department of Juvenile Justice (DJJ) and Department of Children and Families (DCF) must each provide notice at least 180 days prior to the release of a person from total confinement. S. 394.913(1)(a), (b) and (c). Individuals who are immediately released from confinement but who have committed a sexual offense are transferred to the custody of DCF, S. 394.9135(1). The multidisciplinary team then has 72 hours to determine if the individual meets the definition of sexually violent predator. S. 394.9135(2).

¹⁵ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, November 5, 2013.

¹⁶ S. 394.913(2) (a), (b), (c), (d) and (e).

¹⁷ S. 394.913(3)(a).

¹⁸ S. 394.913(3)(a).

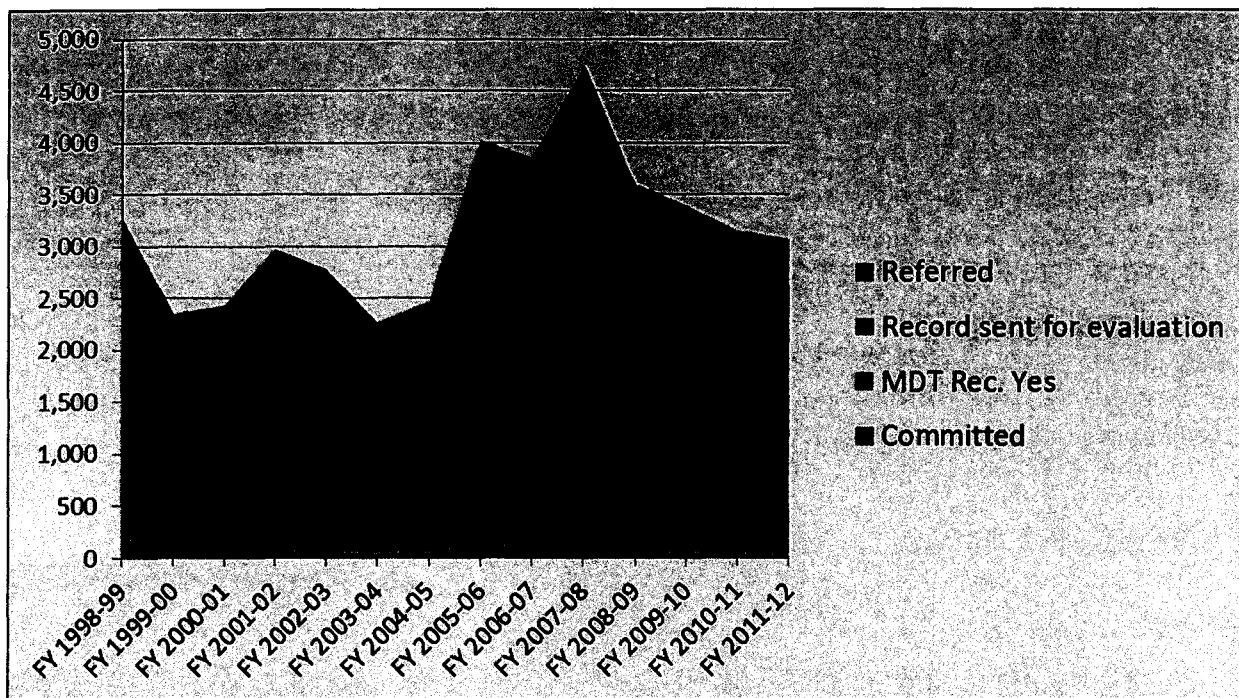
¹⁹ S. 394.913(3)(b)

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The next stage is a document review of all pertinent records of the referred person. This evaluation is performed by screeners who are licensed psychologists employed by DCF. Screeners work independently of one another, and at least two review each file. If any screener reviewing a case determines that the person may meet criteria for commitment, the case is sent on for a clinical evaluation, as described below. However, as the following chart indicates, the vast majority of the referral pool is eliminated in this stage.

Status of Referrals to Sexually Violent Predator Program by Fiscal Year Received²⁰



Clinical evaluations are performed by evaluators who are either licensed psychologists or psychiatrists who have contracted with DCF to perform the clinical evaluations. The clinical evaluation includes, but is not limited to, administering assessment tools (Static 99R and other similar tools), a face-to-face interview (if the referred individual cooperates), documentation review (on-site documents and documents compiled by the reviewers) and interviews with staff and personnel at the site where the person is being held. Upon completion of the evaluation, the evaluator submits his or her opinion as to whether the individual meets criteria as a sexually violent predator to the MDT.²¹

The final stage of the evaluation process is performed by the MDT. The members of the MDT review all information compiled throughout the evaluation process and may request additional information as needed. The MDT meets once every two to three weeks to discuss cases and make a final determination as to whether specific individuals meet criteria for sexually violent predators. The determination is based upon a majority vote of the MDT (typically consisting of five to seven members).

²⁰ See footnote 15. The graph terminates at FY 11-12 because the large number of referrals with pending dispositions precludes the availability of meaningful data for FY 12-13 and FY 13-14.

²¹ Evaluators are considered members of the MDT with their "votes" represented by the conclusions contained within the evaluation reports.

Recommendation

The recommendation on whether to file a petition is the final stage of the clinical determination. If the MDT finds criteria is not met, then a recommendation not to file a petition is forwarded to the state attorney and the matter is closed. However, if the MDT finds criteria are met, then a recommendation to file a petition is forwarded to the state attorney and the case enters the judicial determination phase.

Judicial Determination

The judicial determination process begins with the filing of a petition and continues through a trial, and, if it results in a commitment, concludes with annual review.

Petition and Trial

The judicial determination phase is a multi-step process which begins with the state attorney filing a petition for involuntary civil commitment.²² The state attorney has discretionary authority to file a petition; however, this authority only vests if the MDT determines the referred individual meets criteria and recommends filing a petition.²³ If the state attorney elects to go forward with the case, he or she files a petition with the circuit court which contains factual allegations that the person is a sexually violent predator.²⁴

Upon receipt of the petition, the judge must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator.²⁵ If the judge determines there is probable cause, an order is issued requiring the person to remain in custody and be immediately transferred to an appropriate secure facility if his or her incarcerative sentence expires.²⁶

The court is required to conduct a trial to determine whether the referred individual is a sexually violent predator within 30 days of its determination of probable cause.²⁷ The trial is held before either a judge or a six-member jury who must determine, by clear and convincing evidence, whether a person is a sexually violent predator.²⁸ If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences, the person is committed to the custody of DCF.²⁹ The person will remain under the control, care, and treatment of DCF until such time as his or her mental abnormality or personality disorder has so changed that it is safe for the person to be at large.³⁰

Annual Review

A person committed under the Act is required to have an examination of his or her mental condition conducted at least once every year.³¹ The committed person is also entitled to file a petition for release at any time after

²² Approximately 1,500 petitions have been filed since the inception of the Act.

²³ A positive MDT assessment and recommendation is a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment. See *Harden v. State*, 932 So.2d 1152 (3rd DCA 2006). Thus, without the positive finding and recommendation from the MDT, state attorneys are prohibited from filing a petition.

²⁴ S. 394.914, F.S.

²⁵ S. 394.915(1), F.S.

²⁶ *Id.* The secured facility to which the person is transferred is the Florida Civil Commitment Center.

²⁷ S. 394.916, F.S.

²⁸ S. 394.917(1), F.S.

²⁹ S. 394.917(2), F.S.

³⁰ *Id.* See also footnote 4.

³¹ S. 394.918(1), F.S.

his or her initial commitment.³² Under both scenarios, the court is required to hold a limited, non-adversarial hearing to determine whether there is probable cause to believe that:

1. The person's condition has so changed that it is safe for the person to be at large; and
2. The person will not engage in acts of sexual violence if discharged.³³

The court sets a trial if it determines that there is probable cause.³⁴ At the trial, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.³⁵

Florida Civil Commitment Center

All individuals detained³⁶ or committed under the Act reside in the Florida Civil Commitment Center (FCCC) located in Arcadia, Florida. The FCCC has a capacity of approximately 720 people and houses 648 individuals as of December 2013.³⁷ The population is projected to increase at a rate of 22 persons a year with population anticipated to be 744 in FY 16-17.³⁸ Annual cost per resident is approximately \$36,500.³⁹

Committed residents receive long-term care and treatment at the FCCC. The treatment program is not mandatory and many committed residents elect not to participate⁴⁰. For those persons who participate, the treatment program consists of four phases. Phase I is "Preparation for Change" and takes approximately 15-18 months to complete. Phase II is "Awareness" and takes approximately 18-24 months to complete. Phase III is "Healthy Alternative Behaviors" and takes approximately 18-24 months to complete. Phase IV is "Maintenance and Comprehensive Discharge Planning" and takes approximately 6-9 months to complete. Completion of each phase is based solely upon the individual's active participation in the treatment (i.e. an individual who has not participated will not progress to the next phase simply because that individual has been in a particular phase for a specific period of time). Additionally, an individual will not be immediately discharged upon completion of all four phases. As previously noted, the standard for discharge is that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged.⁴¹

Recidivism

DCF has analyzed the recidivism of offenders who had been recommended for commitment and later released. There have been 762 offenders who were recommended for commitment and subsequently

³² S. 394.920, F.S.

³³ S. 394.918(3), F.S. As this is a non-adversarial hearing only the committed person or his/her counsel may present evidence establishing probable cause. The State is prohibited from presenting any evidence which refutes the committed person's evidence.

³⁴ S. 394.918(3), F.S.

³⁵ S. 394.918(4), F.S.

³⁶ Detainees are individuals in DCF's custody who have been clinically determined to meet criteria for a sexually violent predator but have not been adjudicated as such. These individuals reside at the Center until the conclusion of their trial. However, these individuals are not provided any treatment at the Center due to the lack of adjudication.

³⁷ The overall population varies slightly from month to month based primarily upon changes in the detainee population. Last census data was provided by DCF in the *Contract #L1702 Financial Summary* of the Florida Civil Commitment Center, on file with Appropriations Committee staff.

³⁸ *Involuntary Civil Commitment of Sexually Violent Predators—History and Forecast*, Adopted at the November 20, 2013, Criminal Justice Estimating Conference, Office of Economic & Demographic Research.

³⁹ See footnote 15.

⁴⁰ According to DCF, some of the committed residents do not begin participating in treatment until many years after their initial commitment to the Center.

⁴¹ S. 394.918(4), F.S.

released. Some were released after having been committed as a sexually violent predators and receiving some level of treatment, but most were released without having been committed.⁴² These offenders comprised:

- 85 released directly from prison;
- 406 released as detainees;
- 170 released pursuant to settlement agreements; and
- 101 released after being determined as no longer meeting criteria.⁴³

DCF analyzed arrest and conviction data for this group and determined there had been 74 arrests for sexual offenses. These arrests resulted in 48 convictions. Thus, the average⁴⁴ recidivism rate for sexual offenses perpetrated by this group was 9.7% for arrests and 5.5% for convictions.⁴⁵

Effects of Proposed Changes

The bill makes statutory changes to the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators.

Currently, s. 394.913(3)(b), F.S., requires the MDT to include at least two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The bill requires that they each have experience in or relevant to evaluating or treating persons with mental abnormalities. The bill additionally requires DCF to provide annual training on the civil commitment process to all members of the MDT.

The bill codifies new DCF policy to limit the contract term of contracted evaluators to one year, allowing renewal if performance is satisfactory. The bill requires DCF to regularly provide feedback to each MDT member and to formally evaluate their performance at least annually. The bill also establishes the factors to be considered by DCF in conducting its performance evaluation.

Section 394.913(3)(d), F.S., currently requires the MDT to assess and evaluate each person referred to the team. The assessment and evaluation must include the review of the person's institutional history and treatment record, if any; the person's criminal background; and any other relevant information. The bill expands this requirement by mandating that all members of the MDT review all information provided to it by the referring agencies, as well as any clinical evaluations conducted by a member of the team, prior to making a recommendation. The bill authorizes the MDT to conduct a clinical evaluation and then request a second clinical evaluation if any member questions the conclusion of the first clinical evaluation. The bill also allows the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review, if the person has received a clinical evaluation and the MDT proposes to recommend that the person does not meet the definition of a sexually violent predator. If the state attorney questions the

⁴² As previously noted, the commitment process requires both a clinical determination and a judicial determination that a person is a sexually violent predator. Although the individuals in this group have met the clinical determination, for various reasons the state attorney has elected to not pursue a judicial determination. These reasons include insufficient probable cause, lack of evidence or witness testimony and other similar factors which would likely result in the judicial determination that a person does not meet criteria.

⁴³ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, January 8, 2014.

⁴⁴ Amongst the four released offender groups (prison, detention, no longer meets criteria and settlement agreement) the recidivism rate for arrests ranged from 6.9% to 11.3% and from 3.5% to 8.1% for convictions.

⁴⁵ See footnote 43. As a matter of comparison, Texas, Washington and California have recidivism rates of .8%, 25.2% and 6.5%, respectively.

negative recommendation, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney.

Currently, a majority vote by the MDT is required to recommend that a petition be filed. The bill reduces this requirement by directing the MDT to recommend the state attorney file a petition if any two members determine that the person meets the definition of a sexually violent predator.

Section 394.9135(1), F.S., currently requires that if the anticipated release from total confinement of a person convicted of a sexually violent offense becomes immediate, the agency with jurisdiction shall, upon immediate release, transfer that person to the custody of the DCF. Section 394.9135(2), F.S., requires that within 72 hours after transfer of the person, the MDT shall assess whether the person meets the definition of a sexually violent predator. Currently, a majority vote by the MDT is required to determine that a person meets the definition of sexually violent predator in this immediate release scenario. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

Currently, s. 394.914, F.S., states that upon receipt of the written assessment and recommendation from the MDT, the state attorney may file a petition alleging the person is a sexually violent predator. The Third District Court of Appeals has interpreted this section as requiring a positive MDT assessment and recommendation as a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment.⁴⁶ Thus, the state attorney is prohibiting from filing a petition in any case it did not receive a positive recommendation from the MDT. The bill eliminates this judicially-imposed prohibition by stating that a state attorney may file a petition if it receives a positive or negative recommendation from the MDT.

Section 394.930, F.S., provides DCF with general rule-making authority. The bill provides specific authority to DCF to make rules related to the procedures and requirements for selecting, contracting with, providing routine feedback to, and evaluating contracted members of the multidisciplinary team.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.913, F.S., relating to multidisciplinary teams.

Section 2: Amends s. 394.9135, F.S., relating to immediate release from confinement.

Section 3: Amends s. 394.914, F.S., relating to petition for involuntary civil commitment.

Section 4: Amends s. 394.930, F.S., relating to the Department of Children and Families' authority to adopt rules.

Section 5: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴⁶ See Harden v. State, 932 So.2d 1152 (3rd DCA 2006).

2. Expenditures:

The expenditure impact of this bill affects two components of the Sexually Violent Predator Program (SVPP): costs associated with modifications to the MDT and potential costs to the FCCC if the population increases. According to DCF, the total fiscal impact of \$104,000 includes \$20,000 of nonrecurring expenses for the development of an assessment tool for the annual evaluation of the MDT members, and \$84,000 on a recurring basis for the evaluation and training of MDT members as outlined in the bill.⁴⁷ These costs can be absorbed within existing department resources.

The fiscal impact related to the FCCC is indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met January 31, 2014 and determined this bill to have no impact to state prison beds with an indeterminate fiscal impact to the FCCC. It is unknown if the modifications in this bill will result in additional commitments to the facility or in what number. The department indicates that capacity can be expanded from 720 to 774 beds by adding showers and double-bunking. This expansion is estimated to cost \$63,200. Other expansion options include the reoccupation of an existing Department of Corrections facility that offers 232 beds for \$1,320,000 or building a 112 bed annex at the FCCC for \$7,900,000.⁴⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

⁴⁷ Department of Children and Families' 2014 Agency Legislative Bill Analysis for Bill Number PCB HFS 14-01, dated January 9, 2014.

⁴⁸ E-mail communication from Tim Parson, DCF Legislative Affairs Director, dated January 30, 2014 and on file with Appropriations Committee staff.

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Healthy Families Subcommittee adopted a line amendment to PCB HFS 14-01. The amendment:

- Clarifies the MDT's responsibility and authority regarding information gathering in the clinical determination process;
- Authorizes the MDT to conduct clinical evaluations; and,
- Clarifies the circumstances under which the MDT is required to send its written assessment and recommendation to the state attorney for additional review.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

1 A bill to be entitled
 2 An act relating to sexually violent predators;
 3 amending s. 394.913, F.S.; specifying experience,
 4 training, and contracting requirements for the
 5 multidisciplinary team; authorizing the
 6 multidisciplinary team to consult with law enforcement
 7 agencies and victim advocate groups as part of the
 8 assessment and evaluation process; authorizing a
 9 clinical evaluation; requiring a second clinical
 10 evaluation under certain circumstances; mandating
 11 review of information by the multidisciplinary team
 12 before making a recommendation to the state attorney;
 13 requiring the multidisciplinary team to provide the
 14 state attorney with a recommendation as to whether the
 15 person meets the definition of a sexually violent
 16 predator; requiring the multidisciplinary team to
 17 recommend that the state attorney file a civil
 18 commitment petition under certain circumstances;
 19 requiring the multidisciplinary team to send a
 20 recommendation to the state attorney for further
 21 review under certain circumstances if a person does
 22 not meet the definition of a sexually violent
 23 predator; requiring the multidisciplinary team to
 24 reexamine the case under certain circumstances;
 25 amending s. 394.9135, F.S.; specifying the process for
 26 determining if a person meets the definition of a

27 sexually violent predator when that person's release
 28 is imminent; amending 394.914, F.S.; authorizing the
 29 state attorney to file a petition for civil commitment
 30 regardless of the multidisciplinary team's
 31 recommendation; amending s. 394.930, F.S.; authorizing
 32 the Department of Children and Families to adopt rules
 33 for selecting, contracting with, providing routine
 34 feedback to, and evaluating multidisciplinary team
 35 members; providing an effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Subsection (3) of section 394.913, Florida
 40 Statutes, is amended to read:

41 394.913 Notice to state attorney and multidisciplinary
 42 team of release of sexually violent predator; establishing
 43 multidisciplinary teams; information to be provided to
 44 multidisciplinary teams.-

45 (2) The agency having jurisdiction shall provide the
 46 multidisciplinary team with the following information:

47 (a) The person's name; identifying characteristics;
 48 anticipated future residence; the type of supervision the person
 49 will receive in the community, if any; and the person's offense
 50 history;

51 (b) The person's criminal history, including police
 52 reports, victim statements, presentence investigation reports,

53 | postsentence investigation reports, if available, and any other
 54 | documents containing facts of the person's criminal incidents or
 55 | indicating whether the criminal incidents included sexual acts
 56 | or were sexually motivated;

57 | (c) Mental health, mental status, and medical records,
 58 | including all clinical records and notes concerning the person;

59 | (d) Documentation of institutional adjustment and any
 60 | treatment received and, in the case of an adjudicated delinquent
 61 | committed to the Department of Juvenile Justice, copies of the
 62 | most recent performance plan and performance summary; and

63 | (e) If the person was returned to custody after a period
 64 | of supervision, documentation of adjustment during supervision
 65 | and any treatment received.

66 | (3)(a) The secretary or his or her designee shall
 67 | establish a multidisciplinary team or teams.

68 | (b) Each team shall include, but is not limited to, two
 69 | licensed psychiatrists or psychologists or one licensed
 70 | psychiatrist and one licensed psychologist who shall each have
 71 | experience in or relevant to the evaluation or treatment of
 72 | persons with mental abnormalities. The department shall provide
 73 | annual training to all members of the multidisciplinary team
 74 | regarding the civil commitment process.

75 | (c) The term of a contract between the department and a
 76 | member of the multidisciplinary team may not exceed 1 year;
 77 | however, the contract may be renewed if the member's performance
 78 | is satisfactory. The department shall regularly provide feedback

79 to each multidisciplinary team member and formally evaluate the
 80 member's performance at least annually. A performance evaluation
 81 is based on, at a minimum, the quality of the team member's
 82 research, analysis, and reasoning, adherence to professional
 83 standards, and compliance with technical and procedural
 84 requirements.

85 (d) The multidisciplinary team shall assess and evaluate
 86 each person referred to the team. The assessment and evaluation
 87 shall include a review of the person's institutional history and
 88 treatment record, if any, the person's criminal background, and
 89 any other factor that is relevant to the determination of
 90 whether such person is a sexually violent predator. The
 91 multidisciplinary team may consult with law enforcement agencies
 92 and victim advocate groups during the assessment and evaluation
 93 process. A member of the multidisciplinary team may conduct a
 94 clinical evaluation of the person. A second clinical evaluation
 95 must be conducted if a member of the multidisciplinary team
 96 questions the conclusion of the first clinical evaluation. All
 97 members of the multidisciplinary team shall review, at a
 98 minimum, the information provided in subsection (2) and any
 99 clinical evaluations before making a recommendation.

100 ~~(e)~~ (e) Before recommending that a person meets the
 101 definition of a sexually violent predator, the person must be
 102 offered a personal interview. If the person agrees to
 103 participate in a personal interview, at least one member of the
 104 team who is a licensed psychiatrist or psychologist must conduct

105 a personal interview of the person. If the person refuses to
 106 fully participate in a personal interview, the multidisciplinary
 107 team may proceed with its recommendation without a personal
 108 interview of the person.

109 (f) After all clinical evaluations have been completed,
 110 the multidisciplinary team shall provide to the state attorney a
 111 written assessment and recommendation as to whether the person
 112 meets the definition of a sexually violent predator.

113 1. The multidisciplinary team must recommend that the
 114 state attorney file a petition for civil commitment if at least
 115 two members of the multidisciplinary team determine that the
 116 person meets the definition of a sexually violent predator.

117 2. If the multidisciplinary team recommends that a person
 118 who has received a clinical evaluation does not meet the
 119 definition of a sexually violent predator, the written
 120 assessment and recommendation shall be sent to the state
 121 attorney. If the state attorney in writing questions the
 122 recommendation that the person does not meet the definition of a
 123 sexually violent predator, the multidisciplinary team must
 124 reexamine the case before a final written assessment and
 125 recommendation is provided to the state attorney.

126 (g)(d) The Attorney General's Office shall serve as legal
 127 counsel to the multidisciplinary team.

128 (h)(e)1. Within 180 days after receiving notice, there
 129 shall be a written assessment as to whether the person meets the
 130 definition of a sexually violent predator and a written

131 recommendation, which shall be provided to the state attorney.
 132 The written recommendation shall be provided by the Department
 133 of Children and Families ~~Family Services~~ and shall include the
 134 written report of the multidisciplinary team.

135 2. Notwithstanding subparagraph 1., in the case of a
 136 person for whom the written assessment and recommendation has
 137 not been completed at least 365 days before his or her release
 138 from total confinement, the department shall prioritize the
 139 assessment of that person based upon the person's release date.

140 Section 2. Subsection (2) of section 394.9135, Florida
 141 Statutes, is amended to read:

142 394.9135 Immediate releases from total confinement;
 143 transfer of person to department; time limitations on
 144 assessment, notification, and filing petition to hold in
 145 custody; filing petition after release.-

146 (2) Within 72 hours after transfer, the multidisciplinary
 147 team shall assess whether the person meets the definition of a
 148 sexually violent predator. If the multidisciplinary team
 149 determines that the person does not meet the definition of a
 150 sexually violent predator, that person shall be immediately
 151 released. If at least two members of the multidisciplinary team,
 152 after all clinical evaluations have been conducted, determine
 153 ~~determines~~ that the person meets the definition of a sexually
 154 violent predator, the team shall provide the state attorney, as
 155 designated by s. 394.913, with its written assessment and
 156 recommendation within the 72-hour period or, if the 72-hour

157 | period ends after 5 p.m. on a working day or on a weekend or
 158 | holiday, within the next working day thereafter.

159 | Section 3. Section 394.914, Florida Statutes, is amended
 160 | to read:

161 | 394.914 Petition; contents.—After ~~Following~~ receipt from
 162 | the multidisciplinary team of the written assessment and
 163 | positive or negative recommendation as to whether the person
 164 | meets the definition of a sexually violent predator ~~from the~~
 165 | ~~multidisciplinary team~~, the state attorney, in accordance with
 166 | s. 394.913, may file a petition with the circuit court alleging
 167 | that the person is a sexually violent predator and stating facts
 168 | sufficient to support such allegation. No fee shall be charged
 169 | for the filing of a petition under this section.

170 | Section 4. Section 394.930, Florida Statutes, is amended
 171 | to read:

172 | 394.930 Authority to adopt rules.—The Department of
 173 | Children and Family Services shall adopt rules for:

174 | (1) Procedures that must be followed by members of the
 175 | multidisciplinary teams when assessing and evaluating persons
 176 | subject to this part.†

177 | (2) Education and training requirements for members of the
 178 | multidisciplinary teams and professionals who assess and
 179 | evaluate persons under this part.†

180 | (3) The criteria that must exist in order for a
 181 | multidisciplinary team to recommend to a state attorney that a
 182 | petition should be filed to involuntarily commit a person under

183 | this part. The criteria shall include, but are not limited to,
 184 | whether:

185 | (a) The person has a propensity to engage in future acts
 186 | of sexual violence.~~†~~

187 | (b) The person should be placed in a secure, residential
 188 | facility.~~†~~ ~~and~~

189 | (c) The person needs long-term treatment and care.

190 | (4) The designation of secure facilities for sexually
 191 | violent predators who are subject to involuntary commitment
 192 | under this part.~~†~~

193 | (5) The components of the basic treatment plan for all
 194 | committed persons under this part.~~†~~

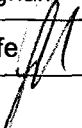
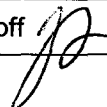
195 | (6) The protocol to inform a person that he or she is
 196 | being examined to determine whether he or she is a sexually
 197 | violent predator under this part.

198 | (7) Procedures and requirements for selecting, contracting
 199 | with, providing routine feedback to, and evaluating members of
 200 | the multidisciplinary team who are under contract with the
 201 | department.

202 | Section 5. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7025 PCB CRJS 14-04 Sexual Offenders
SPONSOR(S): Criminal Justice Subcommittee, Eagle
TIED BILLS: **IDEN./SIM. BILLS:** SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee		McAuliffe 	Leznoff 
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual predators and offenders to bring them further in line with the federal Adam Walsh Act. Specifically, the bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the following offenses to the list of offenses that qualify a person as a sexual predator and sexual offender:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also:

- Requires sexual predators and offenders to provide the sheriff and the Florida Department of Law Enforcement (FDLE) any Internet identifier the offender uses and defines the term "Internet identifier;"
- Requires sexual offenders and predators to provide information about their passport, immigration status, vehicles, professional licenses, and other specified information to the sheriff as part of the registration process;
- Specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register;
- Specifies that an offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program; and
- Makes conforming corrections to the Criminal Punishment Code; offense severity ranking chart.

The Criminal Justice Impact Conference met January 30, 2014 and determined this bill would have an insignificant impact on state prison beds. The bill will also have a nonrecurring fiscal impact of \$150,000 on FDLE for programming costs. See fiscal section.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predator Qualifying Offenses (Section 1)

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - o Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - o Section 794.011, F.S. (sexual battery);
 - o Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - o Section 847.0145, F.S. (selling or buying of minors); or

2. Any felony violation, or attempt thereof, of:
 - o 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;
 - o Section 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking);
 - o Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;¹
 - o Section 794.05, F.S. (unlawful activity with certain minors);
 - o Section 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - o Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - o Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - o Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - o Section 825.1025(2)(b), F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - o Section 827.071, F.S. (sexual performance by a child);
 - o Section 847.0135(5), F.S. (computer pornography);
 - o Section 847.0145, F.S. (selling or buying of minors);
 - o Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
 - o The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

Effect of the Bill

The bill amends s. 775.21, F.S., to add the following qualifying offenses to the list of offenses contained in 2. (enumerated above):

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill changes the reference to s. 847.0135(5), F.S., in the above list to "s. 847.0135, F.S., excluding s. 847.0135(6), F.S." As a result, all of the computer-related sexual offenses in s. 847.0135, F.S., are qualifying offenses, except for subsection (6), which prohibits an owner or operator of a computer online service to knowingly permit a subscriber to use the service to commit a violation of the statute.

¹ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

The bill also changes the reference to s. 825.1025(2)(b), F.S., in the above list to “s. 825.1025, F.S.,” which will include all lewd and lascivious offenses against the elderly or disabled as qualifying offenses.

Sexual Offender Qualifying Offenses (Sections 2, 5, and 6)

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 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking);
 - 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 810.145(8), F.S. (relating to video voyeurism);
 - 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 sanction² 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 the following qualifying offenses:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

Sexual Predator and Sexual Offender Registration (Sections 1, 2, 5, 6, 8, and 9)

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

² 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.

sexual offense, and the date the offense occurred.³ A sexual predator or sexual offender must comply with a number of statutory registration requirements.⁴ Failure to comply with these requirements is generally a third degree felony.⁵

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁶ 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, who then provides the information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.⁷

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.⁸ 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.⁹ 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.¹⁰

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:

- Information about any tattoos or other identifying marks the offender may have.
- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- The make, model, color, vehicle identification number (VIN), and license tag number of all vehicles the offender owns. "Vehicles owned" is defined to mean any motor vehicle that is registered, coregistered, leased, titled, or rented by a sexual offender; a rented vehicle with the sexual offender as an authorized driver; or a vehicle for which a sexual offender is insured as a driver.
- Palm prints.
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.
- Information about any professional licenses the offender may have.
- Whether the offender is volunteering at an institution of higher education.

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 who intend to move to another state 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 five days or more is outside of the United States.

³ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

⁴ *Id.*

⁵ Sections 775.21(10) and 943.0435(14), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁶ 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.

⁷ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

- 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.
- Require FDLE to notify the applicable law enforcement agency in the country where the offender intends to reside.
- Provides that an offender who knowingly provides false registration information by act or omission commits a third degree felony (this provision is also added to ss. 944.607 and 985.4815, F.S.).

Sexual Predator / Offender Registration - Instant Message Name (sections 1, 2, 4, 5, 6, and 8)

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.¹¹ Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹²

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)." The bill specifies that 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.¹³

Removal of the Requirement to Register as a Sexual Offender (Sections 2 and 3)

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.¹⁴ However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;

¹¹ See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹² 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.

¹³ 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.

¹⁴ Sections 775.21(6) and 943.0435(11), F.S.

- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.¹⁵

Effect of the Bill

The bill clarifies that a violation of s. 800.04(5)(c)2., F.S., disqualifies an offender from petitioning the court for removal from the registry if the court finds the offense involved *the use of force or coercion* and unclothed genitals or genital area. The bill permits the offender to petition for removal from the registry in in the circuit court in the circuit where the offender previously resided, or in the county where the conviction or adjudication for the qualifying offense occurred.

The bill specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register. Additionally, an offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program.

Section 943.04354, F.S.

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
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.

Subsection (2) of the statute provides that if a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or predator.¹⁶ At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.¹⁷

¹⁵ The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

¹⁶ The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

¹⁷ If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

Subsection (3) of the statute specifies that a person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or predator.¹⁸ The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.¹⁹

Effect of the Bill

The bill makes a variety of changes to 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:

1. Was convicted, regardless of adjudication, or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction, and the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction;
2. (a) Was required to register as a sexual offender or predator solely on the basis of the conviction or adjudication described in 1.; or
(b) Was convicted, regardless of adjudication, or adjudicated delinquent of an offense in another jurisdiction that is similar to an offense listed in 1. and no longer meets the criteria for registration as a sexual offender under the laws of the jurisdiction where the similar offense occurred; and
3. Is not more than 4 years older than the victim of this violation who was 13 years of age or older but less than 18 years of age at the time the person committed this violation.

The bill amends s. 943.04354(2), F.S., to:

- Specify that the motion must be filed in the criminal court of the circuit in which the offense occurred or the *sentencing* court, or for persons convicted or adjudicated delinquent in another jurisdiction, the criminal circuit court of the circuit in which the petitioner resides.
- Require persons convicted or adjudicated delinquent of an offense in another jurisdiction to provide the court written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
- Require that FDLE be given notice of the motion at least 3 weeks prior to the date of sentencing, disposition of the violation, or hearing on the motion (currently only the state attorney is required to be given notice).
- Require the court to instruct the moving party to provide FDLE with a certified copy of the order granting relief.

The bill also removes language requiring that the offense be committed on or after July 1, 2007, and repeals s. 943.04354(3), F.S. As a result, the registration removal provisions of s. 943.04354, F.S., will apply to all eligible sexual offenders, regardless of their offense date.

Conditions of Supervision – Sex Offender Treatment (Section 7)

Since 1995, there has been a condition of probation requiring sexual offenders convicted of specified offenses to successfully complete sexual offender treatment.²⁰ Currently, this condition of probation,

¹⁸ The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

¹⁹ If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

²⁰ Chapter 1995-283, L.O.F.

found in s. 948.30(1)(c), F.S., is a standard condition of probation and applies to probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation of ch. 794, F.S., s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S.

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer 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 for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.²¹ This section of statute applies to all sexual offenders on probation – not just those convicted of specified offenses.

Effect of the Bill

The bill amends s. 948.31, F.S., to authorize (rather than mandate) a court to require probationers who are required to register as a sexual offender to undergo an evaluation by a qualified practitioner to determine whether the offender needs sex offender treatment. If the practitioner recommends treatment, the offender must successfully complete and pay for such treatment, which must be provided by a qualified practitioner.

The bill also amends s. 948.31, F.S., to remove the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended. This prohibition is not needed in s. 948.31, F.S., as there is already a standard condition of supervision in s. 948.30(1)(e), F.S., prohibiting specified sexual offenders from having contact with minors.

The Criminal Punishment Code - Offense Severity Ranking Chart (Section 10)

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.²² Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.²³ A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

A violation of s. 796.03, F.S. (procuring person under age of 18 for prostitution), is currently ranked in Level 7 of the ranking chart but is incorrectly described as "procuring any person under 16 years for prostitution."²⁴ Similarly, a violation of s. 787.02(3)(a), F.S. (false imprisonment of a child under 13 while committing other specified offenses) is ranked in Level 9 of the ranking chart, but is incorrectly listed as a first degree felony (the offense is a first degree felony punishable for life imprisonment).

Effect of the Bill

The bill amends the ranking chart to correct the above-described inaccuracies.

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

²¹ Section 948.30, F.S., currently contains standard conditions of probation that require sex offender treatment for certain offenders and that prohibit certain sex offenders from having contact with minors if the victim of the offender's offense was under 18. The bill requires courts to impose a restriction against contact with minors regardless of whether the offender's victim was a minor.

²² Section 921.002, F.S.

²³ Section 921.0022, F.S.

²⁴ Section 921.0022(3)(g), F.S.

Section 4. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 6. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 7. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 8. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 9. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 10. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 11. The bill is effective October 1, 2014.

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 met January 30, 2014 and determined this bill would have an insignificant impact on state prison beds.

The possible prison bed impact on the Department of Corrections resulted from the bill increasing the number of people subject to sex offender registration requirements and adding additional information that sexual predators and offenders must provide when registering (failure to register is generally punishable as an unranked third degree felony).

FDLE reports that there are two options for implementing the bill. The first requires an additional Systems Analyst recurring position, while the second requires hiring a programmer (non-recurring) for approximately \$150,000.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²⁵ FDLE Analysis of PCB CRJS 14-04, dated January 13, 2014 (on file with the Criminal Justice Subcommittee).
STORAGE NAME: h7025.APC
DATE: 2/11/2014

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment to the PCB and reported the PCB favorably. The amendment defines the term "vehicles owned" and requires sexual offenders and predators to provide vehicle identification numbers (VIN) as part of the registration process.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee

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A bill to be entitled
An act relating to sexual offenders; amending s.
775.21, F.S.; replacing the definition of the term
"instant message name" with the definition of the term
"Internet identifier"; providing that voluntary
disclosure of specified information waives a
disclosure exemption for such information; defining
the term "vehicles owned"; conforming provisions;
adding additional offenses to the list of sexual
predator qualifying offenses; requiring disclosure of
additional information during the sexual predator
registration process; requiring a sexual predator who
is unable to secure or update a driver license or
identification card within a specified period to
report specified information to the local sheriff's
office within a specified period after such change
with confirmation that he or she also reported such
information to the Department of Highway Safety and
Motor Vehicles; revising reporting requirements if a
sexual predator plans to leave the United States for
more than a specified period; providing criminal
penalties for knowingly providing false registration
information by act or omission; amending s. 943.0435,
F.S.; adding additional offenses to the list of sexual
offender qualifying offenses; replacing the definition
of the term "instant message name" with the definition

27 of the term "Internet identifier"; defining the term
 28 "vehicles owned"; conforming provisions; requiring
 29 disclosure of additional sexual offender registration
 30 information; requiring a sexual offender who is unable
 31 to secure or update a driver license or identification
 32 card within a specified period to report specified
 33 information to the local sheriff's office within a
 34 specified period after such change with confirmation
 35 that he or she also reported such information to the
 36 Department of Highway Safety and Motor Vehicles;
 37 providing additional requirements for sexual offenders
 38 intending to reside outside of the United States;
 39 tolling the registration period during an offender's
 40 term of incarceration, commitment to a residential
 41 program, civil commitment, or detention pursuant to
 42 ch. 985, F.S.; providing criminal penalties for
 43 knowingly providing false registration information by
 44 act or omission; amending s. 943.04354, F.S.; revising
 45 the criteria applicable to provisions allowing removal
 46 of the requirement to register as a sexual offender or
 47 sexual predator; amending s. 943.0437, F.S.;

48 conforming provisions to changes made by the act;
 49 amending s. 944.606, F.S.; adding additional offenses
 50 to the list of sexual offender qualifying offenses;
 51 replacing the definition of the term "instant message
 52 name" with the definition of the term "Internet

53 identifier"; amending s. 944.607, F.S.; adding
 54 additional offenses to the list of sexual offender
 55 qualifying offenses; defining the term "vehicles
 56 owned"; conforming provisions; requiring disclosure of
 57 additional registration information; providing
 58 criminal penalties for knowingly providing false
 59 registration information by act or omission; amending
 60 s. 948.31, F.S.; authorizing the court to require a
 61 sexual offender or sexual predator who is on probation
 62 or community control to undergo an evaluation to
 63 determine whether the offender or predator needs
 64 sexual offender treatment; requiring the probationer
 65 or community controllee to pay for the treatment;
 66 removing a provision prohibiting contact with minors
 67 if sexual offender treatment is recommended; amending
 68 ss. 985.481 and 985.4815, F.S.; providing definitions;
 69 requiring disclosure of additional registration
 70 information by certain sexual offenders adjudicated
 71 delinquent and certain juvenile sexual offenders;
 72 providing criminal penalties for knowingly providing
 73 false registration information by act or omission;
 74 amending s. 921.0022, F.S.; updating provisions of the
 75 offense severity ranking chart to reflect prior
 76 changes in the law; conforming provisions of the
 77 offense severity ranking chart to changes made by the
 78 act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) of subsection (2), paragraph (a) of subsection (4), subsections (6) and (8), and paragraph (a) of subsection (10) of section 775.21, Florida Statutes, are amended, present paragraph (j) of subsection (2) is redesignated as paragraph (i), and new paragraphs (j) and (n) are added to that subsection, to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

~~(i) "Instant message name" means an identifier that allows a person to communicate in real time with another person using the Internet.~~

~~(i)(j)~~ "Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

(j) "Internet identifier" means all electronic mail, chat, instant messenger, social networking, application software ("apps"), or similar names used for Internet communication but does not include a date of birth, social security number, or personal identification number (PIN). Voluntary disclosure by the sexual predator of his or her date of birth, social security number, or personal identification number (PIN) as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

105 (n) "Vehicles owned" means any motor vehicle, as defined
 106 in s. 320.01, that is registered, coregistered, leased, titled,
 107 or rented by a sexual predator; a rented vehicle with a sexual
 108 predator as an authorized driver; or a vehicle for which a
 109 sexual predator is insured as a driver.

110 (4) SEXUAL PREDATOR CRITERIA.—

111 (a) For a current offense committed on or after October 1,
 112 1993, upon conviction, an offender shall be designated as a
 113 "sexual predator" under subsection (5), and subject to
 114 registration under subsection (6) and community and public
 115 notification under subsection (7) if:

116 1. The felony is:

117 a. A capital, life, or first-degree felony violation, or
 118 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 119 is a minor and the defendant is not the victim's parent or
 120 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 121 violation of a similar law of another jurisdiction; or

122 b. Any felony violation, or any attempt thereof, of s.
 123 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 124 787.025(2)(c), where the victim is a minor and the defendant is
 125 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 126 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
 127 796.03; s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025
 128 ~~825.1025(2)(b)~~; s. 827.071; s. 847.0135, excluding s.
 129 847.0135(6) ~~847.0135(5)~~; s. 847.0145; s. 916.1075(2); or s.
 130 985.701(1); or a violation of a similar law of another

131 jurisdiction, and the offender has previously been convicted of
 132 or found to have committed, or has pled nolo contendere or
 133 guilty to, regardless of adjudication, any violation of s.
 134 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 135 787.025(2)(c), where the victim is a minor and the defendant is
 136 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 137 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
 138 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.
 139 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.
 140 916.1075(2); or s. 985.701(1); or a violation of a similar law
 141 of another jurisdiction;

142 2. The offender has not received a pardon for any felony
 143 or similar law of another jurisdiction that is necessary for the
 144 operation of this paragraph; and

145 3. A conviction of a felony or similar law of another
 146 jurisdiction necessary to the operation of this paragraph has
 147 not been set aside in any postconviction proceeding.

148 (6) REGISTRATION.—

149 (a) A sexual predator must register with the department
 150 through the sheriff's office by providing the following
 151 information to the department:

152 1. Name; social security number; age; race; sex; date of
 153 birth; height; weight; tattoos or other identifying marks; hair
 154 and eye color; photograph; address of legal residence and
 155 address of any current temporary residence, within the state or
 156 out of state, including a rural route address and a post office

157 | box; if no permanent or temporary address, any transient
 158 | residence within the state; address, location or description,
 159 | and dates of any current or known future temporary residence
 160 | within the state or out of state; all any electronic mail
 161 | addresses address and all Internet identifiers any instant
 162 | message name required to be provided pursuant to subparagraph
 163 | (g)4.; all home telephone numbers number and any cellular
 164 | telephone numbers number; date and place of any employment;
 165 | make, model, color, vehicle identification number (VIN), and
 166 | license tag number of all vehicles owned; date and place of each
 167 | conviction; fingerprints; palm prints; and a brief description
 168 | of the crime or crimes committed by the offender. A post office
 169 | box may shall not be provided in lieu of a physical residential
 170 | address. The sexual predator must also produce his or her
 171 | passport, if he or she has a passport, and, if he or she is an
 172 | alien, must produce or provide information about documents
 173 | establishing his or her immigration status. The sexual predator
 174 | must also provide information about any professional licenses
 175 | that he or she may have.

176 | a. If the sexual predator's place of residence is a motor
 177 | vehicle, trailer, mobile home, or manufactured home, as defined
 178 | in chapter 320, the sexual predator shall also provide to the
 179 | department written notice of the vehicle identification number;
 180 | the license tag number; the registration number; and a
 181 | description, including color scheme, of the motor vehicle,
 182 | trailer, mobile home, or manufactured home. If a sexual

183 predator's place of residence is a vessel, live-aboard vessel,
 184 or houseboat, as defined in chapter 327, the sexual predator
 185 shall also provide to the department written notice of the hull
 186 identification number; the manufacturer's serial number; the
 187 name of the vessel, live-aboard vessel, or houseboat; the
 188 registration number; and a description, including color scheme,
 189 of the vessel, live-aboard vessel, or houseboat.

190 b. If the sexual predator is enrolled, employed,
 191 volunteering, or carrying on a vocation at an institution of
 192 higher education in this state, the sexual predator shall also
 193 provide to the department the name, address, and county of each
 194 institution, including each campus attended, and the sexual
 195 predator's enrollment, volunteer, or employment status. Each
 196 change in enrollment, volunteer, or employment status shall be
 197 reported in person at the sheriff's office, or the Department of
 198 Corrections if the sexual predator is in the custody or control
 199 of or under the supervision of the Department of Corrections,
 200 within 48 hours after any change in status. The sheriff or the
 201 Department of Corrections shall promptly notify each institution
 202 of the sexual predator's presence and any change in the sexual
 203 predator's enrollment, volunteer, or employment status.

204 2. Any other information determined necessary by the
 205 department, including criminal and corrections records;
 206 nonprivileged personnel and treatment records; and evidentiary
 207 genetic markers when available.

208 (b) If the sexual predator is in the custody or control

209 of, or under the supervision of, the Department of Corrections,
 210 or is in the custody of a private correctional facility, the
 211 sexual predator must register with the Department of
 212 Corrections. A sexual predator who is under the supervision of
 213 the Department of Corrections but who is not incarcerated must
 214 register with the Department of Corrections within 3 business
 215 days after the court finds the offender to be a sexual predator.
 216 The Department of Corrections shall provide to the department
 217 registration information and the location of, and local
 218 telephone number for, any Department of Corrections office that
 219 is responsible for supervising the sexual predator. In addition,
 220 the Department of Corrections shall notify the department if the
 221 sexual predator escapes or absconds from custody or supervision
 222 or if the sexual predator dies.

223 (c) If the sexual predator is in the custody of a local
 224 jail, the custodian of the local jail shall register the sexual
 225 predator within 3 business days after intake of the sexual
 226 predator for any reason and upon release, and shall forward the
 227 registration information to the department. The custodian of the
 228 local jail shall also take a digitized photograph of the sexual
 229 predator while the sexual predator remains in custody and shall
 230 provide the digitized photograph to the department. The
 231 custodian shall notify the department if the sexual predator
 232 escapes from custody or dies.

233 (d) If the sexual predator is under federal supervision,
 234 the federal agency responsible for supervising the sexual

235 predator may forward to the department any information regarding
 236 the sexual predator which is consistent with the information
 237 provided by the Department of Corrections under this section,
 238 and may indicate whether use of the information is restricted to
 239 law enforcement purposes only or may be used by the department
 240 for purposes of public notification.

241 (e)1. If the sexual predator is not in the custody or
 242 control of, or under the supervision of, the Department of
 243 Corrections or is not in the custody of a private correctional
 244 facility, the sexual predator shall register in person:

245 a. At the sheriff's office in the county where he or she
 246 establishes or maintains a residence within 48 hours after
 247 establishing or maintaining a residence in this state; and

248 b. At the sheriff's office in the county where he or she
 249 was designated a sexual predator by the court within 48 hours
 250 after such finding is made.

251 2. Any change in the sexual predator's permanent or
 252 temporary residence, name, ~~or any~~ electronic mail addresses, or
 253 Internet identifiers ~~address and any instant message name~~
 254 required to be provided pursuant to subparagraph (g)4., after
 255 the sexual predator registers in person at the sheriff's office
 256 as provided in subparagraph 1., shall be accomplished in the
 257 manner provided in paragraphs (g), (i), and (j). When a sexual
 258 predator registers with the sheriff's office, the sheriff shall
 259 take a photograph, ~~and~~ a set of fingerprints, and a set of palm
 260 prints of the predator and forward the photographs, palm prints,

261 and fingerprints to the department, along with the information
 262 that the predator is required to provide pursuant to this
 263 section.

264 (f) Within 48 hours after the registration required under
 265 paragraph (a) or paragraph (e), a sexual predator who is not
 266 incarcerated and who resides in the community, including a
 267 sexual predator under the supervision of the Department of
 268 Corrections, shall register in person at a driver ~~driver's~~
 269 license office of the Department of Highway Safety and Motor
 270 Vehicles and shall present proof of registration. At the driver
 271 ~~driver's~~ license office, the sexual predator shall:

272 1. If otherwise qualified, secure a Florida driver
 273 ~~driver's~~ license, renew a Florida driver ~~driver's~~ license, or
 274 secure an identification card. The sexual predator shall
 275 identify himself or herself as a sexual predator who is required
 276 to comply with this section, provide his or her place of
 277 permanent, temporary, or transient residence, including a rural
 278 route address and a post office box, and submit to the taking of
 279 a photograph for use in issuing a driver ~~driver's~~ license,
 280 renewed license, or identification card, and for use by the
 281 department in maintaining current records of sexual predators. A
 282 post office box may ~~shall~~ not be provided in lieu of a physical
 283 residential address. If the sexual predator's place of residence
 284 is a motor vehicle, trailer, mobile home, or manufactured home,
 285 as defined in chapter 320, the sexual predator shall also
 286 provide to the Department of Highway Safety and Motor Vehicles

287 the vehicle identification number (VIN); the license tag number;
 288 the registration number; and a description, including color
 289 scheme, of the motor vehicle, trailer, mobile home, or
 290 manufactured home. If a sexual predator's place of residence is
 291 a vessel, live-aboard vessel, or houseboat, as defined in
 292 chapter 327, the sexual predator shall also provide to the
 293 Department of Highway Safety and Motor Vehicles the hull
 294 identification number; the manufacturer's serial number; the
 295 name of the vessel, live-aboard vessel, or houseboat; the
 296 registration number; and a description, including color scheme,
 297 of the vessel, live-aboard vessel, or houseboat.

298 2. Pay the costs assessed by the Department of Highway
 299 Safety and Motor Vehicles for issuing or renewing a driver
 300 ~~driver's~~ license or identification card as required by this
 301 section. The driver ~~driver's~~ license or identification card
 302 issued to the sexual predator must be in compliance with s.
 303 322.141(3).

304 3. Provide, upon request, any additional information
 305 necessary to confirm the identity of the sexual predator,
 306 including a set of fingerprints.

307 (g)1. Each time a sexual predator's driver ~~driver's~~
 308 license or identification card is subject to renewal, and,
 309 without regard to the status of the predator's driver ~~driver's~~
 310 license or identification card, within 48 hours after any change
 311 of the predator's residence or change in the predator's name by
 312 reason of marriage or other legal process, the predator shall

313 report in person to a driver ~~driver's~~ license office and shall
 314 be subject to the requirements specified in paragraph (f). The
 315 Department of Highway Safety and Motor Vehicles shall forward to
 316 the department and to the Department of Corrections all
 317 photographs and information provided by sexual predators.
 318 Notwithstanding the restrictions set forth in s. 322.142, the
 319 Department of Highway Safety and Motor Vehicles may ~~is~~
 320 ~~authorized to~~ release a reproduction of a color-photograph or
 321 digital-image license to the Department of Law Enforcement for
 322 purposes of public notification of sexual predators as provided
 323 in this section. A sexual predator who is unable to secure or
 324 update a driver license or identification card with the
 325 Department of Highway Safety and Motor Vehicles as provided in
 326 paragraph (f) and this paragraph must also report any change in
 327 the predator's residence or change in the predator's name by
 328 reason of marriage or other legal process to the sheriff's
 329 office in the county where the predator resides or is located
 330 within 48 hours after the change and provide confirmation that
 331 he or she reported such information to the Department of Highway
 332 Safety and Motor Vehicles.

333 2. A sexual predator who vacates a permanent, temporary,
 334 or transient residence and fails to establish or maintain
 335 another permanent, temporary, or transient residence shall,
 336 within 48 hours after vacating the permanent, temporary, or
 337 transient residence, report in person to the sheriff's office of
 338 the county in which he or she is located. The sexual predator

339 shall specify the date upon which he or she intends to or did
 340 vacate such residence. The sexual predator must provide or
 341 update all of the registration information required under
 342 paragraph (a). The sexual predator must provide an address for
 343 the residence or other place that he or she is or will be
 344 located during the time in which he or she fails to establish or
 345 maintain a permanent or temporary residence.

346 3. A sexual predator who remains at a permanent,
 347 temporary, or transient residence after reporting his or her
 348 intent to vacate such residence shall, within 48 hours after the
 349 date upon which the predator indicated he or she would or did
 350 vacate such residence, report in person to the sheriff's office
 351 to which he or she reported pursuant to subparagraph 2. for the
 352 purpose of reporting his or her address at such residence. When
 353 the sheriff receives the report, the sheriff shall promptly
 354 convey the information to the department. An offender who makes
 355 a report as required under subparagraph 2. but fails to make a
 356 report as required under this subparagraph commits a felony of
 357 the second degree, punishable as provided in s. 775.082, s.
 358 775.083, or s. 775.084.

359 4. A sexual predator must register all ~~any~~ electronic mail
 360 addresses and Internet identifiers ~~address or instant message~~
 361 ~~name~~ with the department before ~~prior to~~ using such electronic
 362 mail addresses and Internet identifiers ~~address or instant~~
 363 ~~message name on or after October 1, 2007~~. The department shall
 364 establish an online system through which sexual predators may

365 securely access and update all electronic mail address and
 366 Internet identifier ~~instant message name~~ information.

367 (h) The department must notify the sheriff and the state
 368 attorney of the county and, if applicable, the police chief of
 369 the municipality, where the sexual predator maintains a
 370 residence.

371 (i) A sexual predator who intends to establish a
 372 permanent, temporary, or transient residence in another state or
 373 jurisdiction other than the State of Florida shall report in
 374 person to the sheriff of the county of current residence within
 375 48 hours before the date he or she intends to leave this state
 376 to establish residence in another state or jurisdiction or
 377 within 21 days before his or her planned departure date if the
 378 intended residence of 5 days or more is outside of the United
 379 States. The sexual predator must provide to the sheriff the
 380 address, municipality, county, ~~and~~ state, and country of
 381 intended residence. The sheriff shall promptly provide to the
 382 department the information received from the sexual predator.
 383 The department shall notify the statewide law enforcement
 384 agency, or a comparable agency, in the intended state, ~~or~~
 385 jurisdiction, or country of residence of the sexual predator's
 386 intended residence. The failure of a sexual predator to provide
 387 his or her intended place of residence is punishable as provided
 388 in subsection (10).

389 (j) A sexual predator who indicates his or her intent to
 390 establish a permanent, temporary, or transient residence in

391 another state, a ~~or~~ jurisdiction other than the State of
 392 Florida, or another country and later decides to remain in this
 393 state shall, within 48 hours after the date upon which the
 394 sexual predator indicated he or she would leave this state,
 395 report in person to the sheriff to which the sexual predator
 396 reported the intended change of residence, and report his or her
 397 intent to remain in this state. If the sheriff is notified by
 398 the sexual predator that he or she intends to remain in this
 399 state, the sheriff shall promptly report this information to the
 400 department. A sexual predator who reports his or her intent to
 401 establish a permanent, temporary, or transient residence in
 402 another state, a ~~or~~ jurisdiction other than the State of
 403 Florida, or another country but who remains in this state
 404 without reporting to the sheriff in the manner required by this
 405 paragraph, commits a felony of the second degree, punishable as
 406 provided in s. 775.082, s. 775.083, or s. 775.084.

407 (k)1. The department is responsible for the online
 408 maintenance of current information regarding each registered
 409 sexual predator. The department must maintain hotline access for
 410 state, local, and federal law enforcement agencies to obtain
 411 instantaneous locator file and offender characteristics
 412 information on all released registered sexual predators for
 413 purposes of monitoring, tracking, and prosecution. The
 414 photograph, palm prints, and fingerprints do not have to be
 415 stored in a computerized format.

416 2. The department's sexual predator registration list,

417 containing the information described in subparagraph (a)1., is a
 418 public record. The department may ~~is authorized to~~ disseminate
 419 this public information by any means deemed appropriate,
 420 including operating a toll-free telephone number for this
 421 purpose. When the department provides information regarding a
 422 registered sexual predator to the public, department personnel
 423 must advise the person making the inquiry that positive
 424 identification of a person believed to be a sexual predator
 425 cannot be established unless a fingerprint comparison is made,
 426 and that it is illegal to use public information regarding a
 427 registered sexual predator to facilitate the commission of a
 428 crime.

429 3. The department shall adopt guidelines as necessary
 430 regarding the registration of sexual predators and the
 431 dissemination of information regarding sexual predators as
 432 required by this section.

433 (1) A sexual predator must maintain registration with the
 434 department for the duration of his or her life, unless the
 435 sexual predator has received a full pardon or has had a
 436 conviction set aside in a postconviction proceeding for any
 437 offense that met the criteria for the sexual predator
 438 designation.

439 (8) VERIFICATION.—The department and the Department of
 440 Corrections shall implement a system for verifying the addresses
 441 of sexual predators. The system must be consistent with the
 442 provisions of the federal Adam Walsh Child Protection and Safety

443 Act of 2006 and any other federal standards applicable to such
 444 verification or required to be met as a condition for the
 445 receipt of federal funds by the state. The Department of
 446 Corrections shall verify the addresses of sexual predators who
 447 are not incarcerated but who reside in the community under the
 448 supervision of the Department of Corrections and shall report to
 449 the department any failure by a sexual predator to comply with
 450 registration requirements. County and local law enforcement
 451 agencies, in conjunction with the department, shall verify the
 452 addresses of sexual predators who are not under the care,
 453 custody, control, or supervision of the Department of
 454 Corrections. Local law enforcement agencies shall report to the
 455 department any failure by a sexual predator to comply with
 456 registration requirements.

457 (a) A sexual predator must report in person each year
 458 during the month of the sexual predator's birthday and during
 459 every third month thereafter to the sheriff's office in the
 460 county in which he or she resides or is otherwise located to
 461 reregister. The sheriff's office may determine the appropriate
 462 times and days for reporting by the sexual predator, which shall
 463 be consistent with the reporting requirements of this paragraph.
 464 Reregistration shall include any changes to the following
 465 information:

- 466 1. Name; social security number; age; race; sex; date of
 467 birth; height; weight; tattoos or other identifying marks; hair
 468 and eye color; address of any permanent residence and address of

469 any current temporary residence, within the state or out of
 470 state, including a rural route address and a post office box; if
 471 no permanent or temporary address, any transient residence
 472 within the state; address, location or description, and dates of
 473 any current or known future temporary residence within the state
 474 or out of state; all ~~any~~ electronic mail addresses ~~address~~ and
 475 all Internet identifiers ~~any instant message name~~ required to be
 476 provided pursuant to subparagraph (6)(g)4.; all home telephone
 477 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date
 478 and place of any employment; ~~vehicle~~ make, model, color, vehicle
 479 identification number (VIN), and license tag number of all
 480 vehicles owned; fingerprints; palm prints; and photograph. A
 481 post office box may ~~shall~~ not be provided in lieu of a physical
 482 residential address. The sexual predator must also produce his
 483 or her passport, if he or she has a passport, and, if he or she
 484 is an alien, must produce or provide information about documents
 485 establishing his or her immigration status. The sexual predator
 486 must also provide information about any professional licenses
 487 that he or she may have.

488 2. If the sexual predator is enrolled, employed,
 489 volunteering, or carrying on a vocation at an institution of
 490 higher education in this state, the sexual predator shall also
 491 provide to the department the name, address, and county of each
 492 institution, including each campus attended, and the sexual
 493 predator's enrollment, volunteer, or employment status.

494 3. If the sexual predator's place of residence is a motor

495 vehicle, trailer, mobile home, or manufactured home, as defined
 496 in chapter 320, the sexual predator shall also provide the
 497 vehicle identification number; the license tag number; the
 498 registration number; and a description, including color scheme,
 499 of the motor vehicle, trailer, mobile home, or manufactured
 500 home. If the sexual predator's place of residence is a vessel,
 501 live-aboard vessel, or houseboat, as defined in chapter 327, the
 502 sexual predator shall also provide the hull identification
 503 number; the manufacturer's serial number; the name of the
 504 vessel, live-aboard vessel, or houseboat; the registration
 505 number; and a description, including color scheme, of the
 506 vessel, live-aboard vessel, or houseboat.

507 (b) The sheriff's office shall, within 2 working days,
 508 electronically submit and update all information provided by the
 509 sexual predator to the department in a manner prescribed by the
 510 department.

511 (10) PENALTIES.—

512 (a) Except as otherwise specifically provided, a sexual
 513 predator who fails to register; who fails, after registration,
 514 to maintain, acquire, or renew a driver ~~driver's~~ license or
 515 identification card; who fails to provide required location
 516 information, electronic mail address information before use,
 517 Internet identifier ~~instant message name~~ information before use,
 518 all home telephone numbers ~~number~~ and ~~any~~ cellular telephone
 519 numbers ~~number~~, or change-of-name information; who fails to make
 520 a required report in connection with vacating a permanent

521 residence; who fails to reregister as required; who fails to
 522 respond to any address verification correspondence from the
 523 department within 3 weeks after ~~of~~ the date of the
 524 correspondence; who knowingly provides false registration
 525 information by act or omission; or who otherwise fails, by act
 526 or omission, to comply with the requirements of this section,
 527 commits a felony of the third degree, punishable as provided in
 528 s. 775.082, s. 775.083, or s. 775.084.

529 Section 2. Paragraphs (a) and (g) of subsection (1),
 530 subsections (2) and (3), paragraphs (a) and (d) of subsection
 531 (4), subsections (7), (8), and (11), and paragraphs (b) and (c)
 532 of subsection (14) of section 943.0435, Florida Statutes, are
 533 amended, and paragraph (h) is added to subsection (1) of that
 534 section, to read:

535 943.0435 Sexual offenders required to register with the
 536 department; penalty.—

537 (1) As used in this section, the term:

538 (a)1. "Sexual offender" means a person who meets the
 539 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 540 subparagraph c., or sub-subparagraph d., as follows:

541 a.(I) Has been convicted of committing, or attempting,
 542 soliciting, or conspiring to commit, any of the criminal
 543 offenses proscribed in the following statutes in this state or
 544 similar offenses in another jurisdiction: s. 393.135(2); s.
 545 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 546 the victim is a minor and the defendant is not the victim's

547 parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s.
 548 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 549 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
 550 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 551 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
 552 similar offense committed in this state which has been
 553 redesignated from a former statute number to one of those listed
 554 in this sub-sub-subparagraph; and

555 (II) Has been released on or after October 1, 1997, from
 556 the sanction imposed for any conviction of an offense described
 557 in sub-sub-subparagraph (I). For purposes of sub-sub-
 558 subparagraph (I), a sanction imposed in this state or in any
 559 other jurisdiction includes, but is not limited to, a fine,
 560 probation, community control, parole, conditional release,
 561 control release, or incarceration in a state prison, federal
 562 prison, private correctional facility, or local detention
 563 facility;

564 b. Establishes or maintains a residence in this state and
 565 who has not been designated as a sexual predator by a court of
 566 this state but who has been designated as a sexual predator, as
 567 a sexually violent predator, or by another sexual offender
 568 designation in another state or jurisdiction and was, as a
 569 result of such designation, subjected to registration or
 570 community or public notification, or both, or would be if the
 571 person were a resident of that state or jurisdiction, without
 572 regard to whether the person otherwise meets the criteria for

573 registration as a sexual offender;

574 c. Establishes or maintains a residence in this state who

575 is in the custody or control of, or under the supervision of,

576 any other state or jurisdiction as a result of a conviction for

577 committing, or attempting, soliciting, or conspiring to commit,

578 any of the criminal offenses proscribed in the following

579 statutes or similar offense in another jurisdiction: s.

580 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.

581 787.025(2)(c), where the victim is a minor and the defendant is

582 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),

583 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.

584 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

585 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.

586 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.

587 985.701(1); or any similar offense committed in this state which

588 has been redesignated from a former statute number to one of

589 those listed in this sub-subparagraph; or

590 d. On or after July 1, 2007, has been adjudicated

591 delinquent for committing, or attempting, soliciting, or

592 conspiring to commit, any of the criminal offenses proscribed in

593 the following statutes in this state or similar offenses in

594 another jurisdiction when the juvenile was 14 years of age or

595 older at the time of the offense:

596 (I) Section 794.011, excluding s. 794.011(10);

597 (II) Section 800.04(4)(b) where the victim is under 12

598 years of age or where the court finds sexual activity by the use

599 of force or coercion;

600 (III) Section 800.04(5)(c)1. where the court finds
601 molestation involving unclothed genitals; or

602 (IV) Section 800.04(5)(d) where the court finds the use of
603 force or coercion and unclothed genitals.

604 2. For all qualifying offenses listed in sub-subparagraph
605 (1)(a)1.d., the court shall make a written finding of the age of
606 the offender at the time of the offense.

607
608 For each violation of a qualifying offense listed in this
609 subsection, except for a violation of s. 794.011, the court
610 shall make a written finding of the age of the victim at the
611 time of the offense. For a violation of s. 800.04(4), the court
612 shall also ~~additionally~~ make a written finding indicating
613 whether ~~that~~ the offense involved ~~did or did not involve~~ sexual
614 activity and indicating whether ~~that~~ the offense involved ~~did or~~
615 ~~did not involve~~ force or coercion. For a violation of s.
616 800.04(5), the court shall also ~~additionally~~ make a written
617 finding indicating whether ~~that~~ the offense involved ~~did or did~~
618 ~~not involve~~ unclothed genitals or genital area and indicating
619 whether ~~that~~ the offense involved ~~did or did not involve~~ the use
620 of force or coercion.

621 (g) "Internet identifier ~~Instant message name~~" has the
622 same meaning as provided in s. 775.21 ~~means an identifier that~~
623 ~~allows a person to communicate in real time with another person~~
624 ~~using the Internet.~~

625 (h) "Vehicles owned" means any motor vehicle, as defined
 626 in s. 320.01, that is registered, coregistered, leased, titled,
 627 or rented by a sexual offender; a rented vehicle with a sexual
 628 offender as an authorized driver; or a vehicle for which a
 629 sexual offender is insured as a driver.

630 (2) A sexual offender shall:

631 (a) Report in person at the sheriff's office:

632 1. In the county in which the offender establishes or
 633 maintains a permanent, temporary, or transient residence within
 634 48 hours after:

635 a. Establishing permanent, temporary, or transient
 636 residence in this state; or

637 b. Being released from the custody, control, or
 638 supervision of the Department of Corrections or from the custody
 639 of a private correctional facility; or

640 2. In the county where he or she was convicted within 48
 641 hours after being convicted for a qualifying offense for
 642 registration under this section if the offender is not in the
 643 custody or control of, or under the supervision of, the
 644 Department of Corrections, or is not in the custody of a private
 645 correctional facility.

646

647 Any change in the information required to be provided pursuant
 648 to paragraph (b), including, but not limited to, any change in
 649 the sexual offender's permanent, temporary, or transient
 650 residence, name, ~~any~~ electronic mail addresses, or Internet

651 identifiers ~~address and any instant message name~~ required to be
 652 provided pursuant to paragraph (4)(d), after the sexual offender
 653 reports in person at the sheriff's office, shall be accomplished
 654 in the manner provided in subsections (4), (7), and (8).

655 (b) Provide his or her name; date of birth; social
 656 security number; race; sex; height; weight; hair and eye color;
 657 tattoos or other identifying marks; fingerprints; palm prints;
 658 photograph; occupation and place of employment; address of
 659 permanent or legal residence or address of any current temporary
 660 residence, within the state or out of state, including a rural
 661 route address and a post office box; if no permanent or
 662 temporary address, any transient residence within the state,
 663 address, location or description, and dates of any current or
 664 known future temporary residence within the state or out of
 665 state; make, model, color, vehicle identification number (VIN),
 666 and license tag number of all vehicles owned; all home telephone
 667 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; all
 668 ~~any~~ electronic mail addresses ~~address~~ and all Internet
 669 identifiers ~~any instant message name~~ required to be provided
 670 pursuant to paragraph (4)(d); date and place of each conviction;
 671 and a brief description of the crime or crimes committed by the
 672 offender. A post office box may ~~shall~~ not be provided in lieu of
 673 a physical residential address. The sexual offender must also
 674 produce his or her passport, if he or she has a passport, and,
 675 if he or she is an alien, must produce or provide information
 676 about documents establishing his or her immigration status. The

677 sexual offender must also provide information about any
 678 professional licenses that he or she may have.

679 1. If the sexual offender's place of residence is a motor
 680 vehicle, trailer, mobile home, or manufactured home, as defined
 681 in chapter 320, the sexual offender shall also provide to the
 682 department through the sheriff's office written notice of the
 683 vehicle identification number; the license tag number; the
 684 registration number; and a description, including color scheme,
 685 of the motor vehicle, trailer, mobile home, or manufactured
 686 home. If the sexual offender's place of residence is a vessel,
 687 live-aboard vessel, or houseboat, as defined in chapter 327, the
 688 sexual offender shall also provide to the department written
 689 notice of the hull identification number; the manufacturer's
 690 serial number; the name of the vessel, live-aboard vessel, or
 691 houseboat; the registration number; and a description, including
 692 color scheme, of the vessel, live-aboard vessel, or houseboat.

693 2. If the sexual offender is enrolled, employed,
 694 volunteering, or carrying on a vocation at an institution of
 695 higher education in this state, the sexual offender shall also
 696 provide to the department through the sheriff's office the name,
 697 address, and county of each institution, including each campus
 698 attended, and the sexual offender's enrollment, volunteer, or
 699 employment status. Each change in enrollment, volunteer, or
 700 employment status shall be reported in person at the sheriff's
 701 office, ~~7~~ within 48 hours after any change in status. The sheriff
 702 shall promptly notify each institution of the sexual offender's

703 presence and any change in the sexual offender's enrollment,
 704 volunteer, or employment status.

705 (c) Provide any other information determined necessary by
 706 the department, including criminal and corrections records;
 707 nonprivileged personnel and treatment records; and evidentiary
 708 genetic markers, when available.

709

710 When a sexual offender reports at the sheriff's office, the
 711 sheriff shall take a photograph, ~~and~~ a set of fingerprints, and
 712 a set of palm prints of the offender and forward the
 713 photographs, palm prints, and fingerprints to the department,
 714 along with the information provided by the sexual offender. The
 715 sheriff shall promptly provide to the department the information
 716 received from the sexual offender.

717 (3) Within 48 hours after the report required under
 718 subsection (2), a sexual offender shall report in person at a
 719 driver ~~driver's~~ license office of the Department of Highway
 720 Safety and Motor Vehicles, unless a driver ~~driver's~~ license or
 721 identification card that complies with the requirements of s.
 722 322.141(3) was previously secured or updated under s. 944.607.
 723 At the driver ~~driver's~~ license office the sexual offender shall:

724 (a) If otherwise qualified, secure a Florida driver
 725 ~~driver's~~ license, renew a Florida driver ~~driver's~~ license, or
 726 secure an identification card. The sexual offender shall
 727 identify himself or herself as a sexual offender who is required
 728 to comply with this section and shall provide proof that the

729 sexual offender reported as required in subsection (2). The
 730 sexual offender shall provide any of the information specified
 731 in subsection (2), if requested. The sexual offender shall
 732 submit to the taking of a photograph for use in issuing a driver
 733 ~~driver's~~ license, renewed license, or identification card, and
 734 for use by the department in maintaining current records of
 735 sexual offenders.

736 (b) Pay the costs assessed by the Department of Highway
 737 Safety and Motor Vehicles for issuing or renewing a driver
 738 ~~driver's~~ license or identification card as required by this
 739 section. The driver ~~driver's~~ license or identification card
 740 issued must be in compliance with s. 322.141(3).

741 (c) Provide, upon request, any additional information
 742 necessary to confirm the identity of the sexual offender,
 743 including a set of fingerprints.

744 (4) (a) Each time a sexual offender's driver ~~driver's~~
 745 license or identification card is subject to renewal, and,
 746 without regard to the status of the offender's driver ~~driver's~~
 747 license or identification card, within 48 hours after any change
 748 in the offender's permanent, temporary, or transient residence
 749 or change in the offender's name by reason of marriage or other
 750 legal process, the offender shall report in person to a driver
 751 ~~driver's~~ license office, and shall be subject to the
 752 requirements specified in subsection (3). The Department of
 753 Highway Safety and Motor Vehicles shall forward to the
 754 department all photographs and information provided by sexual

755 offenders. Notwithstanding the restrictions set forth in s.
 756 322.142, the Department of Highway Safety and Motor Vehicles may
 757 ~~is authorized to~~ release a reproduction of a color-photograph or
 758 digital-image license to the Department of Law Enforcement for
 759 purposes of public notification of sexual offenders as provided
 760 in this section and ss. 943.043 and 944.606. A sexual offender
 761 who is unable to secure or update a driver license or
 762 identification card with the Department of Highway Safety and
 763 Motor Vehicles as provided in subsection (3) and this subsection
 764 must also report any change in the offender's permanent,
 765 temporary, or transient residence or change in the offender's
 766 name by reason of marriage or other legal process to the
 767 sheriff's office in the county where the offender resides or is
 768 located within 48 hours after the change and provide
 769 confirmation that he or she reported such information to the
 770 Department of Highway Safety and Motor Vehicles.

771 (d) A sexual offender must register all ~~any~~ electronic
 772 mail addresses and Internet identifiers ~~address or instant~~
 773 ~~message name~~ with the department before using such electronic
 774 mail addresses and Internet identifiers ~~address or instant~~
 775 ~~message name~~. The department shall establish an online system
 776 through which sexual offenders may securely access and update
 777 all electronic mail address and Internet identifier ~~instant~~
 778 ~~message name~~ information.

779 (7) A sexual offender who intends to establish a
 780 permanent, temporary, or transient residence in another state or

781 jurisdiction other than the State of Florida shall report in
 782 person to the sheriff of the county of current residence within
 783 48 hours before the date he or she intends to leave this state
 784 to establish residence in another state or jurisdiction or
 785 within 21 days before his or her planned departure date if the
 786 intended residence of 5 days or more is outside of the United
 787 States. The notification must include the address, municipality,
 788 county, ~~and~~ state, and country of intended residence. The
 789 sheriff shall promptly provide to the department the information
 790 received from the sexual offender. The department shall notify
 791 the statewide law enforcement agency, or a comparable agency, in
 792 the intended state, ~~or~~ jurisdiction, or country of residence of
 793 the sexual offender's intended residence. The failure of a
 794 sexual offender to provide his or her intended place of
 795 residence is punishable as provided in subsection (9).

796 (8) A sexual offender who indicates his or her intent to
 797 establish a permanent, temporary, or transient residence in
 798 another state, a ~~or~~ jurisdiction other than the State of
 799 Florida, or another country and later decides to remain in this
 800 state shall, within 48 hours after the date upon which the
 801 sexual offender indicated he or she would leave this state,
 802 report in person to the sheriff to which the sexual offender
 803 reported the intended change of permanent, temporary, or
 804 transient residence, and report his or her intent to remain in
 805 this state. The sheriff shall promptly report this information
 806 to the department. A sexual offender who reports his or her

807 | intent to establish a permanent, temporary, or transient
 808 | residence in another state, a ~~or~~ jurisdiction other than the
 809 | State of Florida, or another country but who remains in this
 810 | state without reporting to the sheriff in the manner required by
 811 | this subsection commits a felony of the second degree,
 812 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

813 | (11) Except as provided in s. 943.04354, a sexual offender
 814 | must maintain registration with the department for the duration
 815 | of his or her life, unless the sexual offender has received a
 816 | full pardon or has had a conviction set aside in a
 817 | postconviction proceeding for any offense that meets the
 818 | criteria for classifying the person as a sexual offender for
 819 | purposes of registration. However, a sexual offender:

820 | (a)1. Who has been lawfully released from confinement,
 821 | supervision, or sanction, whichever is later, for at least 25
 822 | years and has not been arrested for any felony or misdemeanor
 823 | offense since release, provided that the sexual offender's
 824 | requirement to register was not based upon an adult conviction:

- 825 | a. For a violation of s. 787.01 or s. 787.02;
- 826 | b. For a violation of s. 794.011, excluding s.
- 827 | 794.011(10);
- 828 | c. For a violation of s. 800.04(4)(b) where the court
- 829 | finds the offense involved a victim under 12 years of age or
- 830 | sexual activity by the use of force or coercion;
- 831 | d. For a violation of s. 800.04(5)(b);
- 832 | e. For a violation of s. 800.04(5)(c)2. ~~800.04(5)c.2.~~

833 where the court finds the offense involved the use of force or
 834 coercion and unclothed genitals or genital area;

835 f. For any attempt or conspiracy to commit any such
 836 offense; ~~or~~

837 g. For a violation of similar law of another jurisdiction;
 838 or

839 h. For a violation of a similar offense committed in this
 840 state which has been redesignated from a former statute number
 841 to one of those listed in this paragraph,

842
 843 may petition the criminal division of the circuit court of the
 844 circuit in which the sexual offender resides or previously
 845 resided or in the county where the conviction or adjudication
 846 for the qualifying offense occurred for the purpose of removing
 847 the requirement for registration as a sexual offender.

848 2. The court may grant or deny relief if the offender
 849 demonstrates to the court that he or she has not been arrested
 850 for any crime since release; the requested relief complies with
 851 the provisions of the federal Adam Walsh Child Protection and
 852 Safety Act of 2006 and any other federal standards applicable to
 853 the removal of registration requirements for a sexual offender
 854 or required to be met as a condition for the receipt of federal
 855 funds by the state; and the court is otherwise satisfied that
 856 the offender is not a current or potential threat to public
 857 safety. The state attorney in the circuit in which the petition
 858 is filed must be given notice of the petition at least 3 weeks

859 | before the hearing on the matter. The state attorney may present
 860 | evidence in opposition to the requested relief or may otherwise
 861 | demonstrate the reasons why the petition should be denied. If
 862 | the court denies the petition, the court may set a future date
 863 | at which the sexual offender may again petition the court for
 864 | relief, subject to the standards for relief provided in this
 865 | subsection.

866 | 3. The department shall remove an offender from
 867 | classification as a sexual offender for purposes of registration
 868 | if the offender provides to the department a certified copy of
 869 | the court's written findings or order that indicates that the
 870 | offender is no longer required to comply with the requirements
 871 | for registration as a sexual offender.

872 | 4. For purposes of this paragraph:

873 | a. The registration period of a sexual offender sentenced
 874 | to a term of incarceration or committed to a residential program
 875 | begins upon the offender's release from incarceration or
 876 | commitment for the most recent conviction that required the
 877 | offender to register.

878 | b. A sexual offender's registration period is tolled
 879 | during any period in which the offender is incarcerated, civilly
 880 | committed, detained pursuant to chapter 985, or committed to a
 881 | residential program.

882 | (14)

883 | (b) However, a sexual offender who is required to register
 884 | as a result of a conviction for:

- 885 1. Section 787.01 or s. 787.02 where the victim is a minor
 886 and the offender is not the victim's parent or guardian;
 887 2. Section 794.011, excluding s. 794.011(10);
 888 3. Section 800.04(4)(b) where the court finds the offense
 889 involved a victim under 12 years of age or sexual activity by
 890 the use of force or coercion;
 891 4. Section 800.04(5)(b);
 892 5. Section 800.04(5)(c)1. where the court finds
 893 molestation involving unclothed genitals or genital area;
 894 6. Section 800.04(5)(c)2. ~~800.04(5)c.2.~~ where the court
 895 finds molestation involving the use of force or coercion and
 896 unclothed genitals or genital area;
 897 7. Section 800.04(5)(d) where the court finds the use of
 898 force or coercion and unclothed genitals or genital area;
 899 8. Any attempt or conspiracy to commit such offense; ~~or~~
 900 9. A violation of a similar law of another jurisdiction;
 901 or
 902 10. A violation of a similar offense committed in this
 903 state which has been redesignated from a former statute number
 904 to one of those listed in this paragraph,
 905
 906 must reregister each year during the month of the sexual
 907 offender's birthday and every third month thereafter.
 908 (c) The sheriff's office may determine the appropriate
 909 times and days for reporting by the sexual offender, which shall
 910 be consistent with the reporting requirements of this

911 subsection. Reregistration shall include any changes to the
 912 following information:

913 1. Name; social security number; age; race; sex; date of
 914 birth; height; weight; tattoos or other identifying marks; hair
 915 and eye color; address of any permanent residence and address of
 916 any current temporary residence, within the state or out of
 917 state, including a rural route address and a post office box; if
 918 no permanent or temporary address, any transient residence
 919 within the state; address, location or description, and dates of
 920 any current or known future temporary residence within the state
 921 or out of state; all any electronic mail addresses ~~address~~ and
 922 all Internet identifiers ~~any instant message name~~ required to be
 923 provided pursuant to paragraph (4)(d); all home telephone
 924 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date
 925 and place of any employment; ~~vehicle~~ make, model, color, vehicle
 926 identification number (VIN), and license tag number of all
 927 vehicles owned; fingerprints; palm prints; and photograph. A
 928 post office box may ~~shall~~ not be provided in lieu of a physical
 929 residential address. The sexual offender must also produce his
 930 or her passport, if he or she has a passport, and, if he or she
 931 is an alien, must produce or provide information about documents
 932 establishing his or her immigration status. The sexual offender
 933 must also provide information about any professional licenses
 934 that he or she may have.

935 2. If the sexual offender is enrolled, employed,
 936 volunteering, or carrying on a vocation at an institution of

937 higher education in this state, the sexual offender shall also
 938 provide to the department the name, address, and county of each
 939 institution, including each campus attended, and the sexual
 940 offender's enrollment, volunteer, or employment status.

941 3. If the sexual offender's place of residence is a motor
 942 vehicle, trailer, mobile home, or manufactured home, as defined
 943 in chapter 320, the sexual offender shall also provide the
 944 vehicle identification number; the license tag number; the
 945 registration number; and a description, including color scheme,
 946 of the motor vehicle, trailer, mobile home, or manufactured
 947 home. If the sexual offender's place of residence is a vessel,
 948 live-aboard vessel, or houseboat, as defined in chapter 327, the
 949 sexual offender shall also provide the hull identification
 950 number; the manufacturer's serial number; the name of the
 951 vessel, live-aboard vessel, or houseboat; the registration
 952 number; and a description, including color scheme, of the
 953 vessel, live-aboard vessel or houseboat.

954 4. Any sexual offender who fails to report in person as
 955 required at the sheriff's office, ~~or~~ who fails to respond to any
 956 address verification correspondence from the department within 3
 957 weeks after ~~of~~ the date of the correspondence, ~~or~~ who fails to
 958 report all electronic mail addresses and all Internet
 959 identifiers before use ~~or instant message names~~, or who
 960 knowingly provides false registration information by act or
 961 omission commits a felony of the third degree, punishable as
 962 provided in s. 775.082, s. 775.083, or s. 775.084.

963 Section 3. Section 943.04354, Florida Statutes, is amended
 964 to read:

965 943.04354 Removal of the requirement to register as a
 966 sexual offender or sexual predator in special circumstances.-

967 (1) For purposes of this section, a person shall be
 968 considered for removal of the requirement to register as a
 969 sexual offender or sexual predator only if the person:

970 (a) Was ~~or will be~~ convicted, regardless of adjudication,
 971 or adjudicated delinquent of a violation of s. 794.011, s.
 972 800.04, s. 827.071, ~~or~~ s. 847.0135(5), or a similar offense in
 973 another jurisdiction ~~or the person committed a violation of s.~~
 974 ~~794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which~~
 975 ~~adjudication of guilt was or will be withheld,~~ and the person
 976 does not have any other conviction, regardless of adjudication,
 977 or adjudication of delinquency, ~~or withhold of adjudication of~~
 978 ~~guilt~~ for a violation of s. 794.011, s. 800.04, s. 827.071, ~~or~~
 979 s. 847.0135(5), or a similar offense in another jurisdiction;

980 (b)1. Was convicted, regardless of adjudication, or
 981 adjudicated delinquent of an offense listed in paragraph (a) and
 982 is required to register as a sexual offender or sexual predator
 983 solely on the basis of this conviction or adjudication
 984 ~~violation; or~~

985 2. Was convicted, regardless of adjudication, or
 986 adjudicated delinquent of an offense in another jurisdiction
 987 that is similar to an offense listed in paragraph (a) and no
 988 longer meets the criteria for registration as a sexual offender

989 or sexual predator under the laws of the jurisdiction where the
 990 similar offense occurred; and

991 (c) Is not more than 4 years older than the victim of this
 992 violation who was 13 14 years of age or older but less ~~not more~~
 993 than 18 17 years of age at the time the person committed this
 994 violation.

995 (2) If a person meets the criteria in subsection (1) ~~and~~
 996 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
 997 ~~847.0135(5) was committed on or after July 1, 2007,~~ the person
 998 may move the criminal court of the circuit in which the offense
 999 occurred, the sentencing court, or, for persons convicted or
 1000 adjudicated delinquent of a qualifying offense in another
 1001 jurisdiction, the criminal court of the circuit in which the
 1002 person resides or previously resided ~~court that will sentence or~~
 1003 ~~dispose of this violation~~ to remove the requirement that the
 1004 person register as a sexual offender or sexual predator. The
 1005 person must allege in the motion that he or she meets the
 1006 criteria in subsection (1) and that removal of the registration
 1007 requirement will not conflict with federal law. A person
 1008 convicted or adjudicated delinquent of an offense in another
 1009 jurisdiction that is similar to an offense listed in paragraph
 1010 (1)(a) must provide the court written confirmation that he or
 1011 she is not required to register in the state where the
 1012 conviction or adjudication occurred. The state attorney and the
 1013 department must be given notice of the motion at least 21 days
 1014 before the date of sentencing, ~~or~~ disposition of the this

1015 violation, or hearing on the motion and may present evidence in
 1016 opposition to the requested relief or may otherwise demonstrate
 1017 why the motion should be denied. At sentencing, ~~or~~ disposition
 1018 of the this violation, or hearing on the motion, the court shall
 1019 rule on the this motion and, if the court determines the person
 1020 meets the criteria in subsection (1) and the removal of the
 1021 registration requirement will not conflict with federal law, ~~it~~
 1022 may grant the motion and order the removal of the registration
 1023 requirement. The court shall instruct the person to provide the
 1024 department a certified copy of the order granting relief. If the
 1025 court denies the motion, the person is not authorized under this
 1026 section to file another motion ~~petition~~ for removal of the
 1027 registration requirement.

1028 ~~(3)(a) This subsection applies to a person who:~~
 1029 ~~1. Is not a person described in subsection (2) because the~~
 1030 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
 1031 ~~committed on or after July 1, 2007;~~
 1032 ~~2. Is subject to registration as a sexual offender or~~
 1033 ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~
 1034 ~~827.071; and~~
 1035 ~~3. Meets the criteria in subsection (1).~~
 1036 ~~(b) A person may petition the court in which the sentence~~
 1037 ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~
 1038 ~~827.071 occurred for removal of the requirement to register as a~~
 1039 ~~sexual offender or sexual predator. The person must allege in~~
 1040 ~~the petition that he or she meets the criteria in subsection (1)~~

1041 ~~and removal of the registration requirement will not conflict~~
 1042 ~~with federal law. The state attorney must be given notice of the~~
 1043 ~~petition at least 21 days before the hearing on the petition and~~
 1044 ~~may present evidence in opposition to the requested relief or~~
 1045 ~~may otherwise demonstrate why the petition should be denied. The~~
 1046 ~~court shall rule on the petition and, if the court determines~~
 1047 ~~the person meets the criteria in subsection (1) and removal of~~
 1048 ~~the registration requirement will not conflict with federal law,~~
 1049 ~~it may grant the petition and order the removal of the~~
 1050 ~~registration requirement. If the court denies the petition, the~~
 1051 ~~person is not authorized under this section to file any further~~
 1052 ~~petition for removal of the registration requirement.~~

1053 (3)~~(4)~~ If a person provides to the Department of Law
 1054 Enforcement a certified copy of the court's order removing the
 1055 requirement that the person register as a sexual offender or
 1056 sexual predator for the violation of s. 794.011, s. 800.04, s.
 1057 827.071, or s. 847.0135(5), or a similar offense in another
 1058 jurisdiction, the registration requirement will not apply to the
 1059 person and the department shall remove all information about the
 1060 person from the public registry of sexual offenders and sexual
 1061 predators maintained by the department. However, the removal of
 1062 this information from the public registry does not mean that the
 1063 public is denied access to information about the person's
 1064 criminal history or record that is otherwise available as a
 1065 public record.

1066 Section 4. Subsection (2) and paragraph (a) of subsection

1067 (3) of section 943.0437, Florida Statutes, are amended to read:

1068 943.0437 Commercial social networking websites.—

1069 (2) The department may provide information relating to
 1070 electronic mail addresses and Internet identifiers ~~instant~~
 1071 ~~message names~~ maintained as part of the sexual offender registry
 1072 to commercial social networking websites or third parties
 1073 designated by commercial social networking websites. The
 1074 commercial social networking website may use this information
 1075 for the purpose of comparing registered users and screening
 1076 potential users of the commercial social networking website
 1077 against the list of electronic mail addresses and Internet
 1078 identifiers ~~instant message names~~ provided by the department.

1079 (3) This section shall not be construed to impose any
 1080 civil liability on a commercial social networking website for:

1081 (a) Any action voluntarily taken in good faith to remove
 1082 or disable any profile of a registered user associated with an
 1083 electronic mail address or Internet identifier ~~instant message~~
 1084 ~~name~~ contained in the sexual offender registry.

1085 Section 5. Paragraphs (b) and (d) of subsection (1) and
 1086 paragraph (a) of subsection (3) of section 944.606, Florida
 1087 Statutes, are amended to read:

1088 944.606 Sexual offenders; notification upon release.—

1089 (1) As used in this section:

1090 (b) "Sexual offender" means a person who has been
 1091 convicted of committing, or attempting, soliciting, or
 1092 conspiring to commit, any of the criminal offenses proscribed in

1093 the following statutes in this state or similar offenses in
 1094 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1095 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1096 the defendant is not the victim's parent or guardian; s.
 1097 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 1098 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1099 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1100 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1101 916.1075(2); or s. 985.701(1); or any similar offense committed
 1102 in this state which has been redesignated from a former statute
 1103 number to one of those listed in this subsection, when the
 1104 department has received verified information regarding such
 1105 conviction; an offender's computerized criminal history record
 1106 is not, in and of itself, verified information.

1107 (d) "Internet identifier ~~Instant message name~~" has the
 1108 same meaning as provided in s. 775.21 ~~means an identifier that~~
 1109 ~~allows a person to communicate in real time with another person~~
 1110 ~~using the Internet.~~

1111 (3)(a) The department must provide information regarding
 1112 any sexual offender who is being released after serving a period
 1113 of incarceration for any offense, as follows:

1114 1. The department must provide: the sexual offender's
 1115 name, any change in the offender's name by reason of marriage or
 1116 other legal process, and any alias, if known; the correctional
 1117 facility from which the sexual offender is released; the sexual
 1118 offender's social security number, race, sex, date of birth,

1119 height, weight, and hair and eye color; tattoos or other
 1120 identifying marks; address of any planned permanent residence or
 1121 temporary residence, within the state or out of state, including
 1122 a rural route address and a post office box; if no permanent or
 1123 temporary address, any transient residence within the state;
 1124 address, location or description, and dates of any known future
 1125 temporary residence within the state or out of state; date and
 1126 county of sentence and each crime for which the offender was
 1127 sentenced; a copy of the offender's fingerprints, palm prints,
 1128 and a digitized photograph taken within 60 days before release;
 1129 the date of release of the sexual offender; all any electronic
 1130 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~
 1131 ~~message name~~ required to be provided pursuant to s.
 1132 943.0435(4)(d); all ~~and~~ home telephone numbers ~~number~~ and ~~any~~
 1133 cellular telephone numbers; information about any professional
 1134 licenses the offender may have, if known; passport information
 1135 if he or she has a passport; and, if he or she is an alien,
 1136 information about documents establishing his or her immigration
 1137 status ~~number~~. The department shall notify the Department of Law
 1138 Enforcement if the sexual offender escapes, absconds, or dies.
 1139 If the sexual offender is in the custody of a private
 1140 correctional facility, the facility shall take the digitized
 1141 photograph of the sexual offender within 60 days before the
 1142 sexual offender's release and provide this photograph to the
 1143 Department of Corrections and also place it in the sexual
 1144 offender's file. If the sexual offender is in the custody of a

1145 local jail, the custodian of the local jail shall register the
 1146 offender within 3 business days after intake of the offender for
 1147 any reason and upon release, and shall notify the Department of
 1148 Law Enforcement of the sexual offender's release and provide to
 1149 the Department of Law Enforcement the information specified in
 1150 this paragraph and any information specified in subparagraph 2.
 1151 that the Department of Law Enforcement requests.

1152 2. The department may provide any other information deemed
 1153 necessary, including criminal and corrections records,
 1154 nonprivileged personnel and treatment records, when available.

1155 Section 6. Paragraphs (a) and (f) of subsection (1),
 1156 subsection (4), and paragraphs (b) and (c) of subsection (13) of
 1157 section 944.607, Florida Statutes, are amended, and paragraph
 1158 (g) is added to subsection (1) of that section, to read:

1159 944.607 Notification to Department of Law Enforcement of
 1160 information on sexual offenders.-

1161 (1) As used in this section, the term:

1162 (a) "Sexual offender" means a person who is in the custody
 1163 or control of, or under the supervision of, the department or is
 1164 in the custody of a private correctional facility:

1165 1. On or after October 1, 1997, as a result of a
 1166 conviction for committing, or attempting, soliciting, or
 1167 conspiring to commit, any of the criminal offenses proscribed in
 1168 the following statutes in this state or similar offenses in
 1169 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1170 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and

1171 the defendant is not the victim's parent or guardian; s.
 1172 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 1173 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1174 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1175 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1176 s. 916.1075(2); or s. 985.701(1); or any similar offense
 1177 committed in this state which has been redesignated from a
 1178 former statute number to one of those listed in this paragraph;
 1179 or

1180 2. Who establishes or maintains a residence in this state
 1181 and who has not been designated as a sexual predator by a court
 1182 of this state but who has been designated as a sexual predator,
 1183 as a sexually violent predator, or by another sexual offender
 1184 designation in another state or jurisdiction and was, as a
 1185 result of such designation, subjected to registration or
 1186 community or public notification, or both, or would be if the
 1187 person were a resident of that state or jurisdiction, without
 1188 regard as to whether the person otherwise meets the criteria for
 1189 registration as a sexual offender.

1190 (f) "Internet identifier ~~Instant message name~~" has the
 1191 same meaning as provided in s. 775.21 ~~means an identifier that~~
 1192 ~~allows a person to communicate in real time with another person~~
 1193 ~~using the Internet.~~

1194 (g) "Vehicles owned" has the same meaning as provided in
 1195 s. 943.0435.

1196 (4) A sexual offender, as described in this section, who

1197 | is under the supervision of the Department of Corrections but is
 1198 | not incarcerated must register with the Department of
 1199 | Corrections within 3 business days after sentencing for a
 1200 | registrable offense and otherwise provide information as
 1201 | required by this subsection.

1202 | (a) The sexual offender shall provide his or her name;
 1203 | date of birth; social security number; race; sex; height;
 1204 | weight; hair and eye color; tattoos or other identifying marks;
 1205 | all any electronic mail addresses address and all Internet
 1206 | identifiers any instant message name required to be provided
 1207 | pursuant to s. 943.0435(4)(d); all home telephone numbers and
 1208 | cellular telephone numbers; make, model, color, vehicle
 1209 | identification number (VIN), and license tag number of all
 1210 | vehicles owned; permanent or legal residence and address of
 1211 | temporary residence within the state or out of state while the
 1212 | sexual offender is under supervision in this state, including
 1213 | any rural route address or post office box; if no permanent or
 1214 | temporary address, any transient residence within the state; and
 1215 | address, location or description, and dates of any current or
 1216 | known future temporary residence within the state or out of
 1217 | state. The sexual offender must also produce his or her
 1218 | passport, if he or she has a passport, and, if he or she is an
 1219 | alien, must produce or provide information about documents
 1220 | establishing his or her immigration status. The sexual offender
 1221 | must also provide information about any professional licenses
 1222 | that he or she may have. The Department of Corrections shall

1223 | verify the address of each sexual offender in the manner
 1224 | described in ss. 775.21 and 943.0435. The department shall
 1225 | report to the Department of Law Enforcement any failure by a
 1226 | sexual predator or sexual offender to comply with registration
 1227 | requirements.

1228 | (b) If the sexual offender is enrolled, employed,
 1229 | volunteering, or carrying on a vocation at an institution of
 1230 | higher education in this state, the sexual offender shall
 1231 | provide the name, address, and county of each institution,
 1232 | including each campus attended, and the sexual offender's
 1233 | enrollment, volunteer, or employment status. Each change in
 1234 | enrollment, volunteer, or employment status shall be reported to
 1235 | the department within 48 hours after the change in status. The
 1236 | Department of Corrections shall promptly notify each institution
 1237 | of the sexual offender's presence and any change in the sexual
 1238 | offender's enrollment, volunteer, or employment status.

1239 | (13)

1240 | (b) However, a sexual offender who is required to register
 1241 | as a result of a conviction for:

- 1242 | 1. Section 787.01 or s. 787.02 where the victim is a minor
- 1243 | and the offender is not the victim's parent or guardian;
- 1244 | 2. Section 794.011, excluding s. 794.011(10);
- 1245 | 3. Section 800.04(4)(b) where the victim is under 12 years
- 1246 | of age or where the court finds sexual activity by the use of
- 1247 | force or coercion;
- 1248 | 4. Section 800.04(5)(b);

1249 5. Section 800.04(5)(c)1. where the court finds
 1250 molestation involving unclothed genitals or genital area;
 1251 6. Section 800.04(5)(c)2. ~~800.04(5)e.2.~~ where the court
 1252 finds molestation involving the use of force or coercion and
 1253 unclothed genitals or genital area;
 1254 7. Section 800.04(5)(d) where the court finds the use of
 1255 force or coercion and unclothed genitals or genital area;
 1256 8. Any attempt or conspiracy to commit such offense; ~~or~~
 1257 9. A violation of a similar law of another jurisdiction;
 1258 or
 1259 10. A violation of a similar offense committed in this
 1260 state which has been redesignated from a former statute number
 1261 to one of those listed in this paragraph,
 1262
 1263 must reregister each year during the month of the sexual
 1264 offender's birthday and every third month thereafter.
 1265 (c) The sheriff's office may determine the appropriate
 1266 times and days for reporting by the sexual offender, which shall
 1267 be consistent with the reporting requirements of this
 1268 subsection. Reregistration shall include any changes to the
 1269 following information:
 1270 1. Name; social security number; age; race; sex; date of
 1271 birth; height; weight; tattoos or other identifying marks; hair
 1272 and eye color; address of any permanent residence and address of
 1273 any current temporary residence, within the state or out of
 1274 state, including a rural route address and a post office box; if

1275 no permanent or temporary address, any transient residence;
 1276 address, location or description, and dates of any current or
 1277 known future temporary residence within the state or out of
 1278 state; all ~~any~~ electronic mail addresses ~~address~~ and all
 1279 Internet identifiers ~~any instant message name~~ required to be
 1280 provided pursuant to s. 943.0435(4)(d); all home telephone
 1281 numbers and cellular telephone numbers; date and place of any
 1282 employment; ~~vehicle~~ make, model, color, vehicle identification
 1283 number (VIN), and license tag number of all vehicles owned;
 1284 fingerprints; palm prints; and photograph. A post office box
 1285 shall not be provided in lieu of a physical residential address.
 1286 The sexual offender must also produce his or her passport, if he
 1287 or she has a passport, and, if he or she is an alien, must
 1288 produce or provide information about documents establishing his
 1289 or her immigration status. The sexual offender must also provide
 1290 information about any professional licenses that he or she may
 1291 have.

1292 2. If the sexual offender is enrolled, employed,
 1293 volunteering, or carrying on a vocation at an institution of
 1294 higher education in this state, the sexual offender shall also
 1295 provide to the department the name, address, and county of each
 1296 institution, including each campus attended, and the sexual
 1297 offender's enrollment, volunteer, or employment status.

1298 3. If the sexual offender's place of residence is a motor
 1299 vehicle, trailer, mobile home, or manufactured home, as defined
 1300 in chapter 320, the sexual offender shall also provide the

1301 vehicle identification number; the license tag number; the
 1302 registration number; and a description, including color scheme,
 1303 of the motor vehicle, trailer, mobile home, or manufactured
 1304 home. If the sexual offender's place of residence is a vessel,
 1305 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1306 sexual offender shall also provide the hull identification
 1307 number; the manufacturer's serial number; the name of the
 1308 vessel, live-aboard vessel, or houseboat; the registration
 1309 number; and a description, including color scheme, of the
 1310 vessel, live-aboard vessel or houseboat.

1311 4. Any sexual offender who fails to report in person as
 1312 required at the sheriff's office, ~~or~~ who fails to respond to any
 1313 address verification correspondence from the department within 3
 1314 weeks after ~~of~~ the date of the correspondence, ~~or~~ who fails to
 1315 report all electronic mail addresses and all Internet
 1316 identifiers before use ~~or instant message names, or who~~
 1317 knowingly provides false registration information by act or
 1318 omission commits a felony of the third degree, punishable as
 1319 provided in s. 775.082, s. 775.083, or s. 775.084.

1320 Section 7. Section 948.31, Florida Statutes, is amended to
 1321 read:

1322 948.31 Evaluation and treatment of sexual predators and
 1323 offenders on probation or community control.—The court may ~~shall~~
 1324 require ~~an evaluation by a qualified practitioner to determine~~
 1325 ~~the need of a probationer or community controllee for treatment.~~
 1326 ~~If the court determines that a need therefor is established by~~

1327 ~~the evaluation process, the court shall require sexual offender~~
 1328 ~~treatment as a term or condition of probation or community~~
 1329 ~~control for any probationer or community controllee person who~~
 1330 is required to register as a sexual predator under s. 775.21 or
 1331 sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to
 1332 undergo an evaluation, at the probationer or community
 1333 controllee's expense, by a qualified practitioner to determine
 1334 whether such probationer or community controllee needs sexual
 1335 offender treatment. If the qualified practitioner determines
 1336 that sexual offender treatment is needed and recommends
 1337 treatment, the probationer or community controllee must
 1338 successfully complete and pay for the treatment. Such treatment
 1339 must ~~shall be required to~~ be obtained from a qualified
 1340 practitioner as defined in s. 948.001. Treatment may not be
 1341 administered by a qualified practitioner who has been convicted
 1342 or adjudicated delinquent of committing, or attempting,
 1343 soliciting, or conspiring to commit, any offense that is listed
 1344 in s. 943.0435(1)(a)1.a.(I). ~~The court shall impose a~~
 1345 ~~restriction against contact with minors if sexual offender~~
 1346 ~~treatment is recommended. The evaluation and recommendations for~~
 1347 ~~treatment of the probationer or community controllee shall be~~
 1348 ~~provided to the court for review.~~

1349 Section 8. Subsection (1) and paragraph (a) of subsection
 1350 (3) of section 985.481, Florida Statutes, are amended to read:
 1351 985.481 Sexual offenders adjudicated delinquent;
 1352 notification upon release.-

1353 (1) As used in this section, the term:
 1354 (a) "Convicted" has the same meaning as provided in s.
 1355 943.0435.
 1356 (b) "Internet identifier" has the same meaning as provided
 1357 in s. 775.21.
 1358 (c) ~~(b)~~ "Sexual offender" means a person who has been
 1359 adjudicated delinquent as provided in s. 943.0435(1)(a)1.d.
 1360 (d) "Vehicles owned" has the same meaning as provided in
 1361 s. 943.0435.
 1362 (3)(a) The department must provide information regarding
 1363 any sexual offender who is being released after serving a period
 1364 of residential commitment under the department for any offense,
 1365 as follows:
 1366 1. The department must provide the sexual offender's name,
 1367 any change in the offender's name by reason of marriage or other
 1368 legal process, and any alias, if known; ~~the~~ correctional
 1369 facility from which the sexual offender is released; ~~the sexual~~
 1370 ~~offender's~~ social security number, race, sex, date of birth,
 1371 height, weight, and hair and eye color; tattoos or other
 1372 identifying marks; make, model, color, vehicle identification
 1373 number (VIN), and license tag number of all vehicles owned, if
 1374 known; address of any planned permanent residence or temporary
 1375 residence, within the state or out of state, including a rural
 1376 route address and a post office box; if no permanent or
 1377 temporary address, any transient residence within the state;
 1378 address, location or description, and dates of any known future

1379 temporary residence within the state or out of state; date and
 1380 county of disposition and each crime for which there was a
 1381 disposition; a copy of the offender's fingerprints, palm prints,
 1382 and a digitized photograph taken within 60 days before release;
 1383 the date of release of the sexual offender; all ~~and~~ home
 1384 telephone numbers ~~number~~ and ~~any~~ cellular telephone numbers; all
 1385 Internet identifiers; information about any professional
 1386 licenses the offender may have, if known; passport information,
 1387 if he or she has a passport; and, if he or she is an alien,
 1388 information about documents establishing his or her immigration
 1389 status ~~number~~. The department shall notify the Department of Law
 1390 Enforcement if the sexual offender escapes, absconds, or dies.
 1391 If the sexual offender is in the custody of a private
 1392 correctional facility, the facility shall take the digitized
 1393 photograph of the sexual offender within 60 days before the
 1394 sexual offender's release and also place it in the sexual
 1395 offender's file. If the sexual offender is in the custody of a
 1396 local jail, the custodian of the local jail shall register the
 1397 offender within 3 business days after intake of the offender for
 1398 any reason and upon release, and shall notify the Department of
 1399 Law Enforcement of the sexual offender's release and provide to
 1400 the Department of Law Enforcement the information specified in
 1401 this subparagraph and any information specified in subparagraph
 1402 2. which the Department of Law Enforcement requests.
 1403 2. The department may provide any other information
 1404 considered necessary, including criminal and delinquency

1405 records, when available.

1406 Section 9. Paragraph (d) of subsection (1) of section
 1407 985.4815, Florida Statutes, is redesignated as paragraph (e),
 1408 new paragraphs (d) and (f) are added to subsection (1), and
 1409 subsection (4) and paragraph (b) of subsection (13) of that
 1410 section are amended, to read:

1411 985.4815 Notification to Department of Law Enforcement of
 1412 information on juvenile sexual offenders.—

1413 (1) As used in this section, the term:

1414 (d) "Internet identifier" has the same meaning as provided
 1415 in s. 775.21.

1416 (f) "Vehicles owned" has the same meaning as provided in
 1417 s. 943.0435.

1418 (4) A sexual offender, as described in this section, who
 1419 is under the supervision of the department but who is not
 1420 committed must register with the department within 3 business
 1421 days after adjudication and disposition for a registrable
 1422 offense and otherwise provide information as required by this
 1423 subsection.

1424 (a) The sexual offender shall provide his or her name;
 1425 date of birth; social security number; race; sex; height;
 1426 weight; hair and eye color; tattoos or other identifying marks;
 1427 make, model, color, vehicle identification number (VIN), and
 1428 license tag number of all vehicles owned; permanent or legal
 1429 residence and address of temporary residence within the state or
 1430 out of state while the sexual offender is in the care or custody

1431 or under the jurisdiction or supervision of the department in
 1432 this state, including any rural route address or post office
 1433 box; if no permanent or temporary address, any transient
 1434 residence; address, location or description, and dates of any
 1435 current or known future temporary residence within the state or
 1436 out of state; all home telephone numbers and cellular telephone
 1437 numbers; all Internet identifiers; and the name and address of
 1438 each school attended. The sexual offender must also produce his
 1439 or her passport, if he or she has a passport, and, if he or she
 1440 is an alien, must produce or provide information about documents
 1441 establishing his or her immigration status. The offender must
 1442 also provide information about any professional licenses that he
 1443 or she may have. The department shall verify the address of each
 1444 sexual offender and shall report to the Department of Law
 1445 Enforcement any failure by a sexual offender to comply with
 1446 registration requirements.

1447 (b) If the sexual offender is enrolled, employed,
 1448 volunteering, or carrying on a vocation at an institution of
 1449 higher education in this state, the sexual offender shall
 1450 provide the name, address, and county of each institution,
 1451 including each campus attended, and the sexual offender's
 1452 enrollment, volunteer, or employment status. Each change in
 1453 enrollment, volunteer, or employment status shall be reported to
 1454 the department within 48 hours after the change in status. The
 1455 department shall promptly notify each institution of the sexual
 1456 offender's presence and any change in the sexual offender's

1457 enrollment, volunteer, or employment status.

1458 (13)

1459 (b) The sheriff's office may determine the appropriate
 1460 times and days for reporting by the sexual offender, which shall
 1461 be consistent with the reporting requirements of this
 1462 subsection. Reregistration shall include any changes to the
 1463 following information:

1464 1. Name; social security number; age; race; sex; date of
 1465 birth; height; weight; hair and eye color; tattoos or other
 1466 identifying marks; fingerprints; palm prints; address of any
 1467 permanent residence and address of any current temporary
 1468 residence, within the state or out of state, including a rural
 1469 route address and a post office box; if no permanent or
 1470 temporary address, any transient residence; address, location or
 1471 description, and dates of any current or known future temporary
 1472 residence within the state or out of state; passport
 1473 information, if he or she has a passport; if he or she is an
 1474 alien, information about documents establishing his or her
 1475 immigration status; home telephone numbers and cellular
 1476 telephone numbers; Internet identifiers; name and address of
 1477 each school attended; date and place of any employment; ~~vehicle~~
 1478 make, model, color, vehicle identification number (VIN), and
 1479 license tag number of all vehicles owned; ~~fingerprints;~~ and
 1480 photograph. A post office box shall not be provided in lieu of a
 1481 physical residential address. The offender must also provide
 1482 information about any professional licenses that he or she may

1483 | have.

1484 | 2. If the sexual offender is enrolled, employed,
 1485 | volunteering, or carrying on a vocation at an institution of
 1486 | higher education in this state, the sexual offender shall also
 1487 | provide to the department the name, address, and county of each
 1488 | institution, including each campus attended, and the sexual
 1489 | offender's enrollment, volunteer, or employment status.

1490 | 3. If the sexual offender's place of residence is a motor
 1491 | vehicle, trailer, mobile home, or manufactured home, as defined
 1492 | in chapter 320, the sexual offender shall also provide the
 1493 | vehicle identification number; the license tag number; the
 1494 | registration number; and a description, including color scheme,
 1495 | of the motor vehicle, trailer, mobile home, or manufactured
 1496 | home. If the sexual offender's place of residence is a vessel,
 1497 | live-aboard vessel, or houseboat, as defined in chapter 327, the
 1498 | sexual offender shall also provide the hull identification
 1499 | number; the manufacturer's serial number; the name of the
 1500 | vessel, live-aboard vessel, or houseboat; the registration
 1501 | number; and a description, including color scheme, of the
 1502 | vessel, live-aboard vessel, or houseboat.

1503 | 4. Any sexual offender who fails to report in person as
 1504 | required at the sheriff's office, ~~or~~ who fails to respond to any
 1505 | address verification correspondence from the department within 3
 1506 | weeks after the date of the correspondence, or who knowingly
 1507 | provides false registration information by act or omission
 1508 | commits a felony of the third degree, punishable as provided in

1509 ss. 775.082, 775.083, and 775.084.

1510 Section 10. Paragraphs (g) and (i) of subsection (3) of
 1511 section 921.0022, Florida Statutes, are amended to read:

1512 921.0022 Criminal Punishment Code; offense severity
 1513 ranking chart.—

1514 (3) OFFENSE SEVERITY RANKING CHART

1515 (g) LEVEL 7

1516

Florida	Felony	
Statute	Degree	Description

1517

316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
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1518

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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1519

316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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1521	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1522	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1523	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
1524	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
1525	456.065(2)	3rd	Practicing a health care profession without a license.
1526	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
	458.327(1)	3rd	Practicing medicine without a

			license.
1527	459.013(1)	3rd	Practicing osteopathic medicine without a license.
1528	460.411(1)	3rd	Practicing chiropractic medicine without a license.
1529	461.012(1)	3rd	Practicing podiatric medicine without a license.
1530	462.17	3rd	Practicing naturopathy without a license.
1531	463.015(1)	3rd	Practicing optometry without a license.
1532	464.016(1)	3rd	Practicing nursing without a license.
1533	465.015(2)	3rd	Practicing pharmacy without a license.
1534	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
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1536	467.201	3rd	Practicing midwifery without a license.
1537	468.366	3rd	Delivering respiratory care services without a license.
1538	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
1539	483.901 (9)	3rd	Practicing medical physics without a license.
1540	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
1541	484.053	3rd	Dispensing hearing aids without a license.
1542	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

1543	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1544	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1545	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1546	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew <u>driver</u> driver's license or identification card; other registration violations.
1547	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.

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1548	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1549	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1550	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1551	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel

1552			homicide).
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1553			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1554			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1555			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1556			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
1557			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1558			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1559			

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1560	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1561	784.081(1)	1st	Aggravated battery on specified official or employee.
1562	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1563	784.083(1)	1st	Aggravated battery on code inspector.
1564	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
1565	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
	790.07(4)	1st	Specified weapons violation subsequent to previous

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			conviction of s. 790.07(1) or (2).
1566	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1567	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1568	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1569	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1570	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1571	790.23	1st, PBL	Possession of a firearm by a

1572	794.08(4)	3rd	person who qualifies for the penalty enhancements provided for in s. 874.04.
1573	796.03	2nd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
1574	800.04(5)(c)1.	2nd	Procuring any person under <u>18</u> 16 years for prostitution.
1575	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
1576	806.01(2)	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
1577			Maliciously damage structure by fire or explosive.

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1578	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1579	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1580	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1581	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1582	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1583	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

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1584	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1585	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1586	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1587	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1588	812.131(2)(a)	2nd	Robbery by sudden snatching.
1589	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1590	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.234(8)(a)	2nd	Solicitation of motor vehicle

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1591			accident victims with intent to defraud.
1592	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1593	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
1594	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
1595	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1596	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

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1597	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
1598	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1599	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1600	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1601	838.015	2nd	Bribery.
1602	838.016	2nd	Unlawful compensation or reward for official behavior.
1603	838.021(3)(a)	2nd	Unlawful harm to a public servant.

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1604	838.22	2nd	Bid tampering.
1605	843.0855(2)	3rd	Impersonation of a public officer or employee.
1606	843.0855(3)	3rd	Unlawful simulation of legal process.
1607	843.0855(4)	3rd	Intimidation of a public officer or employee.
1608	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1609	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1610	872.06	2nd	Abuse of a dead human body.
1611	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

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1612	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1613	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
1614	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

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1615	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
1616	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1617	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1618	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1619	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
1620	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

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1621	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
1622	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1623	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
1624	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
1625	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1626	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.

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1627	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1628	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1629	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1630	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1631	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
	943.0435(13)	3rd	Failure to report or providing

1632	943.0435(14)	3rd	false information about a sexual offender; harbor or conceal a sexual offender.
1633	944.607(9)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; <u>providing false registration information.</u>
1634	944.607(10)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
1635	944.607(12)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1636	944.607(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
			Sexual offender; failure to report and reregister; failure

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1637			to respond to address verification; <u>providing false registration information.</u>
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1638			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1639			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; <u>providing false registration information.</u>
1640			
1641	(i)	LEVEL 9	
1642			
	Florida	Felony	
	Statute	Degree	Description
1643			
	316.193	1st	DUI manslaughter; failing to

1644	(3) (c) 3.b.		render aid or give information.
1645	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
1646	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
1647	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
1648	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
1649	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial

			institution.
1650	775.0844	1st	Aggravated white collar crime.
1651	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1652	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
1653	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
1654	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
1655	787.01(1)(a)1.	1st, PBL	Kidnapping; hold for ransom or

			reward or as a shield or hostage.
1656	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
1657	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
1658	787.02(3)(a)	1st, <u>PBL</u>	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
1659	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
1660			

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1661	787.06(3)(g)	1st, PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
1662	787.06(4)	1st	Selling or buying of minors into human trafficking.
1663	790.161	1st	Attempted capital destructive device offense.
1664	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
1665	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
1666	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
	794.011(4)	1st	Sexual battery; victim 12 years or older, certain

			circumstances.
1667	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
1668	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
1669	796.035	1st	Selling or buying of minors into prostitution.
1670	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1671	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
1672	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
1673	812.135(2)(b)	1st	Home-invasion robbery with

1674	817.535(3)(b)	1st	<p>weapon.</p> <p>Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.</p>
1675	817.535(4)(a)2.	1st	<p>Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.</p>
1676	817.535(5)(b)	1st	<p>Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.</p>
1677	817.568(7)	2nd, PBL	<p>Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising</p>

			custodial authority.
1678			
	827.03(2)(a)	1st	Aggravated child abuse.
1679			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
1680			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1681			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
1682			
	893.135	1st	Attempted capital trafficking offense.
1683			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1684			

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1685	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1686	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
1687	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1688	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
1689	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
1690	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
1691	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
	893.135	1st	Trafficking in Phenethylamines,

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1692	(1) (k) 2.c.		400 grams or more.
	896.101 (5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
1693			
	896.104 (4) (a) 3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
1694			
1695	Section 11. This act shall take effect October 1, 2014.		

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7025 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Appropriations Committee
 2 Representative McBurney offered the following:

Amendment (with title amendment)

Between lines 1694 and 1695, insert:

6 Section 11. For fiscal year 2014-2015 the sum of \$150,000
 7 in nonrecurring funds is appropriated from the General Revenue
 8 Fund to the Department of Law Enforcement for the implementation
 9 of this act.

11 -----
 12 **T I T L E A M E N D M E N T**

Remove line 78 and insert:

14 act; providing an appropriation; providing an effective
 15 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7027 PCB CRJS 14-07 Sexual Offenses
SPONSOR(S): Criminal Justice Subcommittee, Gaetz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
1) Appropriations Committee		McAuliffe	Leznoff
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill contains a variety of provisions relating to sexual offenses. Specifically, the bill:

- Eliminates the statute of limitations for violations of s. 800.04, F.S., involving a victim under the age of 16 and an offender 18 years of age or older at the time of the offense;
- Increases the penalties for specified sexual battery and lewd or lascivious offenses against children;
- Increases the minimum mandatory sentence for dangerous sexual felony offenders to 50 years;
- Broadens the definition of the term "sexual activity" for purposes of s. 794.05, F.S., (prohibiting a person 24 years of age or older from engaging in sexual activity with a person 16 or 17 years of age);
- Makes second or subsequent violations of s. 800.03, F.S. (exposure of sexual organs), a third degree felony;
- Authorizes a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. (exposure of sexual organs);
- Broadens the voyeurism statute to specify that voyeurism may occur when a person, with lewd or lascivious intent, secretly observes another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located a public or private dwelling, structure, or conveyance;
- Creates a new sentencing multiplier for specified adult-on-minor sexual offenses;
- Prohibits the Department of Corrections (DOC) from granting incentive gain-time to inmates sentenced for specified sexual offenses;
- Requires the court to impose a split sentence in which an offender convicted of specified sexual offenses is sentenced to 2 years of community supervision after serving his or her term of imprisonment; and
- Prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of the material's content.

The Criminal Justice Impact Conference (CJIC) met January 30, 2014 to determine the prison bed and community corrections impact of this bill. CJIC determined the quantifiable impact of this bill for Fiscal Year 2014-2015 through Fiscal Year 2015-2016 will be \$173,082. However, the significant fiscal impact of this bill will occur in later years since this bill increases maximum sentences that affect offenders with typically high incarceration rates and substantial sentences. The cumulative impact is projected to be \$41.7 million fixed capital outlay cost (514 beds) and a cumulative \$21.9 million operating cost after seven years for the incentive gain-time prohibition and the sentence point multiplier. Total costs (FY 2014-15 to FY 2020-21): \$63.7 million. Further, there are several provisions of the bill that have an indeterminate or indeterminate but expected insignificant impact. See fiscal section.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Lewd and Lascivious Offenses – Penalties

Section 800.04, F.S., provides criminal penalties for the following lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age.¹

Lewd or Lascivious Battery

Lewd or lascivious battery, a second degree felony,² occurs when a person:

- Engages in sexual activity³ with a person 12 years of age or older but less than 16; or
- Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.⁴

Lewd or Lascivious Molestation

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.⁵

The penalties for lewd or lascivious molestation are as follows:

- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony.⁶
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age commits a second degree felony.
- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a second degree felony.
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a third degree felony.⁷

Lewd or Lascivious Conduct

Lewd or lascivious conduct occurs when a person:

- Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
- Solicits a person under 16 years of age to commit a lewd or lascivious act.⁸

An offender 18 years of age or older who commits lewd or lascivious conduct commits a second degree felony. An offender less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.

¹ Neither the victim's lack of chastity nor the victim's consent is a defense. Section 800.04(2), F.S.

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 800.04(1)(a), F.S., defines the term "sexual activity" as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

⁴ Section 800.04(4), F.S.

⁵ Section 800.04(5), F.S.

⁶ A life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), F.S., is punishable by a term of imprisonment for life; or a split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4), F.S. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S., by a term of imprisonment for life. Section 775.082(3)(a)4., F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 800.04(6), F.S.

Lewd or Lascivious Exhibition

A person who commits any of the following acts in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition:

- Intentionally masturbates;
- Intentionally exposes the genitals in a lewd or lascivious manner; or
- Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.⁹

An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a second degree felony. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a third degree felony.

Effect of the Bill

The bill increases the penalty for lewd or lascivious battery to a first degree felony¹⁰ if the offender is 18 years of age or older and has previously been convicted of a violation of:

- Section 787.01(2), F.S.,¹¹ if the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed a sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S., against the minor;
- Section 787.02(2), F.S.,¹² if the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed a sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S., against the minor;
- Section 787.01(3)(a)2. or 3., F.S.;
- Section 787.02(3)(a)2. or 3., F.S.;
- Chapter 794, F.S.¹³ (excluding s. 794.011(10), F.S.);
- Section 800.04, F.S.;
- Section 825.1025, F.S.;¹⁴ or
- Section 847.0135(5),¹⁵ F.S.

The bill increases the penalty for lewd or lascivious molestation to a first degree felony if the offender is 18 years of age or older, the victim is 12 years of age or older but less than 16, and the offender has previously been convicted of one of the above-listed offenses.

The bill amends the offense severity ranking chart¹⁶ to modify statutory references and descriptive language.

Lewd and Lascivious Offenses – Statute of Limitations

Criminal Cases

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or “statutes of limitations.” For example:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

⁹ Section 800.04(7), F.S.

¹⁰ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ Relating to kidnapping.

¹² Relating to false imprisonment.

¹³ Relating to sexual battery.

¹⁴ Relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

¹⁵ Relating to lewd or lascivious exhibition using a computer.

¹⁶ Criminal 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. Section 921.0022, F.S.

The general time limitations described above currently apply to the lewd and lascivious offenses in s. 800.04, F.S. However, in addition to these general time limitations, s. 775.15, F.S., establishes the following specific time limitations for violations of s. 800.04, F.S.:

- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed between July 1, 2004 and June 30, 2006, may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹⁷
- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹⁸

It should also be noted that for violations of s. 800.04, F.S., the applicable period of limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier (generally, the time for prosecution of a criminal case starts to run on the day after the offense is committed).¹⁹

Civil Cases

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida, which range from 30 days to 20 years. The time for commencing civil actions starts to run from the time the cause of action accrues, which occurs when the last element constituting the cause of action occurs.²⁰

Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues.²¹

Effect of the Bill

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 800.04, F.S., involving a victim under the age of 16 and an offender 18 years of age or older at the time of the offense. The bill applies to all offenses except those offenses barred by prosecution on or before October 1, 2014.

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 800.04, F.S., involving a victim under the age of 16 and an offender 18 years of age or older at the time of the offense. The bill applies to all actions except those which would have been time barred on or before October 1, 2014.

Sexual Battery

It is currently a first degree felony ranked in Level 9 of the offense severity ranking chart²² for a person to commit sexual battery upon a person 12 years of age or older without that person's consent under any of the following circumstances:

¹⁷ Section 775.15(15), F.S.

¹⁸ Section 775.15(16), F.S.

¹⁹ Section 775.15(13)(a), F.S.

²⁰ Section 95.031(1), F.S.

²¹ Section 95.11(3)(n), F.S.

²² The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal 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. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; 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. The points are added in order to determine the "lowest permissible sentence" for the offense.

- The victim is physically helpless to resist;
- The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;
- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim;
- The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact;
- The victim is physically incapacitated; or
- The offender is a certified law enforcement officer, correctional officer, or correctional probation officer or is an elected official exempt from such certification by virtue of s. 943.253, F.S., or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and the officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.²³

It is also a first degree felony ranked in Level 9 for a person who is in a position of familial or custodial authority to a person less than 18 years of age to engage in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery.²⁴

It is a second degree felony ranked in Level 8 for a person to commit sexual battery upon a person 12 years of age or older, without that person's consent if, in the process of committing the sexual battery, the offender does not use physical force and violence likely to cause serious personal injury.²⁵

Effect of the Bill

The bill increases the felony degree of several sexual battery offenses. Specifically, the bill increases from a first degree felony (up to 30 years imprisonment) to a first degree felony punishable by up to life imprisonment the following offenses:

- Sexual battery of a minor by a person who has familial or custodial authority over the minor;
- Sexual battery by an adult on a person 12-17 years of age, without consent, when the sexual battery involves one of the specified circumstances described above (such as the victim being physically helpless to resist); and
- Sexual battery on a person 12 years of age or older, without consent, when the sexual battery involves one of the specified circumstances described above and the offender has previously been convicted of a specified sexual battery or lewd felony.²⁶

The bill further amends s. 794.011, F.S., to increase the following offenses from a second degree felony (up to 15 years imprisonment) to a first degree felony (up to 30 years imprisonment):

- Sexual battery by an adult on a person 12-17 years of age, without consent, when the sexual battery does not involve violence likely to cause serious physical injury; and
- Sexual battery on a person 12 years of age or older, without consent, when the sexual battery does not involve violence likely to cause serious physical injury and the offender has previously been convicted of a specified sexual battery or lewd felony.²⁷

²³ Section 794.011(4), F.S.

²⁴ Section 794.011(8)(b), F.S.

²⁵ Section 794.011(5), F.S.

²⁶ The offenses include kidnapping and false imprisonment (ss. 787.01 and 787.02, F.S.) where the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed a sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S., against the minor; sexual battery offenses (ch. 794, F.S., excluding s. 794.011(10), F.S.); lewd acts against a child (ss. 800.04 and 847.0135(5), F.S.); and lewd acts against an elderly person or disabled person (s. 825.1025, F.S.).

The bill amends the offense severity ranking chart to modify statutory references and descriptive language.

Dangerous Sexual Felony Offenders

Section 794.0115, F.S., provides that a person is a "dangerous sexual felony offender" if they are convicted of a violation of ss. 787.025(2)(c);²⁸ 794.011(2), (3), (4), (5), or (8);²⁹ 800.04(4) or (5);³⁰ 825.1025(2) or (3);³¹ 827.071(2), (3), or (4);³² or 847.0145, F.S.;³³ or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or
- Has previously been convicted of a violation of ss. 787.025(2)(c); 794.011(2), (3), (4), (5), or (8); 800.04(4) or (5); 825.1025(2) or (3); 827.071(2), (3), or (4); or 847.0145, F.S.; or any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph.

Dangerous sexual felony offenders must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment.

Effect of the Bill

The bill increases the minimum mandatory sentence for dangerous sexual felony offenders to 50 years.

Unlawful Activity with Certain Minors

Section 794.05, F.S., makes it a second degree felony for a person 24 years of age or older to engage in sexual activity with a person 16 or 17 years of age.³⁴ The term "sexual activity" is defined as oral, anal, or vaginal penetration by, or union with, the sexual organ of another, and does not include an act done for a bona fide medical purpose.

Effect of the Bill

The bill amends the definition of the term "sexual activity" to include anal or vaginal penetration of another by any other object. This mirrors the definition of "sexual battery" found in s. 794.011, F.S.

Exposure of Sexual Organs

Section 800.03, F.S., makes it a first degree misdemeanor³⁵ for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from

²⁷ *Id.*

²⁸ Relating to luring or enticing a child.

²⁹ Relating to sexual battery.

³⁰ Relating to lewd or lascivious battery and lewd or lascivious molestation committed upon or in the presence of persons less than 16 years of age.

³¹ Relating to lewd or lascivious battery and lewd or lascivious molestation committed upon or in the presence of an elderly or disabled person.

³² Relating to sexual performance by a child.

³³ Relating to selling or buying of minors.

³⁴ The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under ch. 743, F.S.

³⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Effect of the Bill

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony.

Arrest without a Warrant

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.³⁶

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include:

- Violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases;
- Misdemeanor luring or enticing a child and child abuse;
- Aggravated assault upon a law enforcement officer, firefighter and other listed persons;
- Battery;
- Criminal mischief or graffiti-related offenses; and
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.³⁷

For the offenses listed above, an LEO does not have to witness the crime in order to make a warrantless arrest – they only need to have probable cause to believe the person committed the crime.³⁸

Effect of the Bill

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. (exposure of sexual organs).

Voyeurism

A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.³⁹ Voyeurism is a first degree misdemeanor for a first violation, and a third degree felony for second or subsequent violations.

State attorneys have reported problems prosecuting persons under the voyeurism statute when the facts of the case involve voyeurism in arguably public places. For example, in 2007, a defendant in Escambia County successfully argued that he was not in a location that afforded a reasonable expectation of privacy when he used a mirror to look up the skirt of a patron at a bookstore.⁴⁰

Effect of the Bill

The bill amends the voyeurism statute to specify that voyeurism occurs when a person, with lewd or lascivious intent, secretly observes another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located a public or private dwelling, structure, or conveyance. The bill defines "intimate area" as any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

³⁶ Section 901.15, F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Section 810.14, F.S.

⁴⁰ Letter from Assistant State Attorney Adrienne Emerson, dated September 11, 2013 (on file with Criminal Justice Subcommittee).

Sentencing Multiplier

The Criminal Punishment Code (Code)⁴¹ is Florida's framework for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code 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.⁴² Points are also assigned and accrue based upon any additional offenses, victim injury, sexual contact, prior offenses, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.⁴³ Points accrued for any of these factors are added to determine one's sentencing score subtotal.

A person's sentencing score subtotal may be multiplied if authorized by statute. Sentencing multipliers essentially operate to increase one's total sentencing score, and generally result in longer sentences. Currently, s. 921.0024, F.S., authorizes sentencing "multipliers" for the following:

- Violations of the Law Enforcement Protection Act (LEPA);⁴⁴
- Violations of specified drug trafficking offenses;
- Repeat motor vehicle theft;
- Criminal gang-related offenses; or
- Offenses involving domestic violence in the presence of a child.

Total sentence points are derived from the subtotal sentence points. If no multiplier applies, the subtotal sentence points are the total sentence points. If a multiplier applies, the total sentence points are the subtotal sentence points as multiplied by the multiplier.

If total sentence points are less than or equal to 44 points, the lowest permissible sentence is any non-state prison sanction (e.g., probation). The maximum penalty depends on the felony degree of the primary offense.⁴⁵ For example, the maximum penalty for a third degree felony is 5 years in state prison.

If total sentence points are greater than 44 points, one must subtract 28 points from the total sentence points and decrease the remaining total by 25 percent.⁴⁶ This resulting figure is the lowest permissible sentence in prison months.⁴⁷ Again, the maximum penalty depends on the felony degree of the primary offense.⁴⁸

Effect of the Bill

The bill creates a new sentencing multiplier for adult-on-minor sexual offenses. The multiplier specifies that if the offender was 18 years of age or older and the victim was younger than 18 years of age at the

⁴¹ Sections 921.002-921.0027, F.S.

⁴² Section 921.0022, F.S.

⁴³ Section 921.0024, F.S.

⁴⁴ LEPA provides increased penalties for persons convicted of a violent offense against any law enforcement officer, correctional officer, state attorney, assistant state attorney, and justice or judge of a court, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, Section 775.0823, F.S.

⁴⁵ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

⁴⁶ For example, if an offender's primary offense is a second degree felony and his or her total sentence points are 80 points, 28 is subtracted from 80, which equals 52 points. The 52 points are then multiplied by 0.75, which equals 39 months in prison. In this example, absent mitigation, the sentencing range is 39 months in state prison up to 15 years in state prison (the maximum penalty for a second degree felony).

⁴⁷ Mandatory minimum terms are an exception to general sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply." Rule 3.704(26), Florida Rules of Criminal Procedure.

⁴⁸ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of any of the following, the subtotal sentence points are multiplied by 2.0.

- Section 787.01(2), F.S.,⁴⁹ if the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed a sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S., against the minor;
- Section 787.02(2), F.S.,⁵⁰ if the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed a sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S., against the minor;
- Section 787.01(3)(a)2. or 3., F.S.,⁵¹
- Section 787.02(3)(a)2. or 3., F.S.,⁵²
- Section 794.011, F.S.⁵³ (excluding s. 794.011(10), F.S.);
- Section 800.04, F.S.,⁵⁴ or
- Section 847.0135(5),⁵⁵ F.S.

If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Gain Time

Currently, the Department of Corrections (DOC) may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.⁵⁶ Inmates earn incentive gain-time at the rate that was in effect on the date the inmate committed the offense which resulted in his or her incarceration.⁵⁷ For offenses committed on or after October 1, 1995, DOC may grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.⁵⁸ Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes⁵⁹ are not entitled to gain-time.⁶⁰ When an inmate is found guilty of a violation of the laws of the state or DOC rules, gain-time may be forfeited.⁶¹

Effect of the Bill

The bill prohibits DOC from granting incentive gain-time to inmates sentenced for any of the following offenses committed on or after October 1, 2014:

- Section 782.04(1)(a)2.c., F.S.,⁶²
- Section 787.01(3)(a)2. or 3., F.S.,⁶³
- Section 787.02(3)(a)2. or 3., F.S.,⁶⁴

⁴⁹ Relating to kidnapping.

⁵⁰ Relating to false imprisonment.

⁵¹ Relating to kidnapping of a child under the age of 13 and, in the course of committing the offense, committing sexual battery or a lewd and lascivious offense.

⁵² Relating to false imprisonment of a child under the age of 13 and, in the course of committing the offense, committing sexual battery or a lewd and lascivious offense.

⁵³ Relating to sexual battery.

⁵⁴ Relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

⁵⁵ Relating to lewd or lascivious exhibition using a computer.

⁵⁶ Section 944.275(4)(b), F.S.

⁵⁷ *Id.*

⁵⁸ Section 944.275(4)(b)3., F.S.

⁵⁹ For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. Section 794.0115(7), F.S.

⁶⁰ Section 944.275(4)(b)3., F.S.

⁶¹ Section 944.275(5), F.S.

⁶² Relating to murder when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, sexual battery.

⁶³ Relating to kidnapping of a child under the age of 13 and, in the course of committing the offense, commits sexual battery or a lewd and lascivious offense.

- Section 794.011, F.S.,⁶⁵ excluding s. 794.011(10), F.S.;
- Section 800.04, F.S.,⁶⁶
- Section 825.1025, F.S.,⁶⁷ or
- Section 847.0135(5), F.S.⁶⁸

Split Sentences

Section 948.012, F.S., *authorizes* the court, at time of sentencing, to impose a split sentence whereby the defendant is placed on probation or community control upon completing a period of imprisonment.

Effect of the Bill

The bill amends s. 948.012, F.S., to *require* the court to impose a split sentence if the court imposes a term of years which is less than the maximum sentence for the offense, and the person is convicted of any of the following offenses that were committed on or after October 1, 2014:

- Murder while engaged in sexual battery (s. 782.04(1)(a)2.c., F.S.);
- Kidnapping a child under the age of 13 and, in the course of that offense, committing sexual battery or a lewd act against the child (s. 787.01(3)(a)2. and 3., F.S.);
- False imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery or a lewd act against the child (s. 787.02(3)(a)2. and 3., F.S.);
- Sexual battery (s. 794.011, F.S.), excluding s. 794.011(10), F.S.;
- Lewd acts against a child (s. 800.04, F.S., or s. 847.0135(5), F.S.); or
- Lewd acts against an elderly person or disabled person (s. 825.1025, F.S.).

The probation or community control portion of the split sentence must extend for at least 2 years. However, if the term of years imposed by the court extends to within 2 years of the maximum sentence for the offense, the probation or community control portion of the split sentence must extend for the remainder of the maximum sentence.

Conditions of Sex Offender Probation

Probation/Conditional Release

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.⁶⁹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by probation officers with restricted caseloads.⁷⁰ Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.⁷¹ The Department of Corrections (DOC) supervises all probationers, community controlees, and conditional releasees sentenced in circuit court.⁷²

⁶⁴ Relating to false imprisonment of a child under the age of 13 and, in the course of committing the offense, commits sexual battery or a lewd and lascivious offense.

⁶⁵ Relating to sexual battery.

⁶⁶ Relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

⁶⁷ Relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

⁶⁸ Relating to lewd or lascivious exhibition using a computer.

⁶⁹ Section 948.001(8), F.S.

⁷⁰ Section 948.001(3), F.S.

⁷¹ Section 947.1405, F.S., requires conditional release for an inmate who:

- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

⁷² Sections 948.001(1) and 947.1405, F.S.

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controlees.⁷³ Similarly, the Commission is required to impose the conditions of supervision found in s. 947.1405, F.S., on conditional releasees.⁷⁴ In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper.⁷⁵

Sex Offender Supervision

In addition to the standard conditions of supervision described above, ss. 948.30 and 947.1405, F.S., require the court/Commission to impose additional conditions of supervision for probationers, community controlees, and conditional releasees convicted of specified sexual offenses. For example, these offenders are subject to a curfew, residency restrictions, employment restrictions, and sex offender treatment.

Currently, ss. 948.30(1)(g), and 947.1405(7)(a)7., F.S., require the court/Commission to impose a condition prohibiting an offender convicted of a specified sexual offense⁷⁶ from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material⁷⁷ *that is relevant to the offender's deviant behavior pattern* (unless otherwise indicated in a treatment plan proscribed in the sexual offender treatment program).⁷⁸

Effect of the Bill

The bill amends ss. 948.30 and 947.1405, F.S., to require the court/Commission to impose a condition prohibiting probationers, community controlees, and conditional releasees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, *regardless of its content* (unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program). Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

The condition applies to offenders whose crime was committed on or after October 1, 2014, and who are placed on probation, community control, or conditional release for a violation of ch. 794, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses); s. 827.071, F.S. (sexual performance by a child); s. 847.0135(5), F.S. (computer transmissions of pornography); and s. 847.0145, F.S. (buying and selling minors).

As a result, these offenders will be prohibited from possessing obscene, pornographic or sexually stimulating material, regardless of its content.

B. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3. Amends s. 794.011, F.S., relating to sexual battery.

⁷³ Sections 948.001(8) and 948.03, F.S. These conditions require offenders to comply with a variety of requirements (e.g., report to probation supervisors as directed, permit probation supervisors to visit at home or elsewhere, work faithfully at suitable employment, make restitution, not associate with persons engaged in criminal activities, etc.).

⁷⁴ Section 947.1405(2), F.S.

⁷⁵ Sections 948.03(2) and 947.1405(6), F.S.

⁷⁶ These offenses include violations of ch. 794, F.S., relating to sexual battery; s. 800.04, F.S., relating to lewd or lascivious offenses; s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135(5), F.S., relating to certain computer transmissions of pornography; and s. 847.0145, F.S., relating to buying and selling minors.

⁷⁷ This material includes telephone, electronic media, computer programs, or computer services.

⁷⁸ The condition applies to offenders whose crime was committed on or after October 1, 1995.

Section 4. Amends s. 794.0115, F.S., relating to dangerous sexual felony offenders; mandatory sentencing.

Section 5. Amends s. 794.05, F.S., relating to unlawful sexual activity with certain minors.

Section 6. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 7. Amends s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

Section 8. Amends s. 810.14, F.S., relating to voyeurism prohibited; penalties.

Section 9. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 10. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 11. Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 12. Amends s. 944.275, F.S., relating to gain-time.

Section 13. Amends s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 14. Amends s. 947.1405, F.S., relating to conditional release program.

Section 15. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 16. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 17. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 18. Provides an effective date of October 1, 2014.

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 (CJIC) provides the final, official estimate of the prison bed impact, if any, of criminal legislation. CJIC projects the operational costs as well as the fixed capital costs to house the projected increase (or decrease) in prison admissions. CJIC met January 30, 2014 to determine the prison bed and community corrections impact of this bill.

Sentencing Multiplier

The bill increases minimum sentence length of adult-on-minor sex offenses sentenced under the Criminal Punishment Code by creating a new sentence point multiplier. Since these offenders tend to have high incarceration rates and receive long sentences, the significant impact of this bill will occur in later years. CJIC projects an operational impact for Fiscal Years 2014-15 through 2015-16 to be \$154,845. The cumulative impact is projected to be \$27.4 million fixed capital outlay cost (317 beds) and a cumulative \$14.2 million operational cost after seven years. Total costs (FY 2014-15 to FY 2020-21): \$41.6 million.

a	b	c	FUNDS REQUIRED				g
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds	
2014-2015	1	1	\$8,949	\$914,865	\$923,814	\$923,814	
2015-2016	15	14	\$145,896	\$2,396,432	\$2,542,328	\$3,466,142	
2016-2017	53	38	\$631,822	\$3,260,400	\$3,892,222	\$7,358,364	
2017-2018	103	50	\$1,478,490	\$4,093,039	\$5,571,529	\$12,929,893	
2018-2019	164	61	\$2,581,089	\$4,594,592	\$7,175,681	\$20,105,574	
2019-2020	231	67	\$3,894,898	\$6,015,442	\$9,910,340	\$30,015,913	
2020-2021	317	86	\$5,516,990	\$6,129,736	\$11,646,726	\$41,662,639	
Total	317	317	\$14,258,133	\$27,404,506	\$41,662,639	\$41,662,639	

Gain-Time

The bill prohibits incentive gain-time for offenders convicted of certain sexual offenses. Since this is adding prison time to the end of a likely lengthy prison sentence, the significant impact of this bill will occur in later years. CJIC projects an operational impact for Fiscal Years 2014-15 through 2015-16 to be \$63,830. The cumulative impact is projected to be \$19.9 million fixed capital outlay cost (233 beds) and a cumulative \$9.8 million operational cost after 7 years. Total costs (FY 2014-15 to FY 2020-21): \$29.7 million.

a	b	c	d	e	f	g
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2014-2015	0	0	\$0	\$426,937	\$426,937	\$426,937
2015-2016	7	7	\$63,830	\$1,324,344	\$1,388,174	\$1,815,111
2016-2017	28	21	\$325,203	\$2,151,864	\$2,477,067	\$4,292,177
2017-2018	61	33	\$843,498	\$3,556,247	\$4,399,745	\$8,691,922
2018-2019	114	53	\$1,691,725	\$4,114,560	\$5,806,285	\$14,498,207
2019-2020	174	60	\$2,839,824	\$4,126,873	\$6,966,697	\$21,464,904
2020-2021	233	59	\$4,097,473	\$4,205,284	\$8,302,757	\$29,767,660
Total	233	233	\$9,861,551	\$19,906,109	\$29,767,660	\$29,767,660

Combined Sentence Point Multiplier and Incentive Gain-Time Prohibition

CJIC projects an operational impact for Fiscal Years 2014-15 through 2015-16 to be \$173,082. The cumulative impact is projected to be \$41.7 million fixed capital outlay cost (514 beds) and a cumulative \$21.9 million operating cost after seven years for the incentive gain-time prohibition and the sentence point multiplier. Total costs (FY 2014-15 to FY 2020-21): \$63.7 million.

a	b	c	d	e	f	g
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2014-2015	1	1	\$8,949	\$1,036,847	\$1,045,796	\$1,045,796
2015-2016	17	16	\$164,133	\$3,216,264	\$3,380,397	\$4,426,193
2016-2017	68	51	\$789,778	\$5,151,432	\$5,941,210	\$10,367,402
2017-2018	147	79	\$2,037,663	\$7,045,395	\$9,083,058	\$19,450,460
2018-2019	252	105	\$3,857,133	\$8,366,272	\$12,223,405	\$31,673,865
2019-2020	374	122	\$6,172,673	\$9,792,580	\$15,965,253	\$47,639,118
2020-2021	514	140	\$8,939,940	\$7,127,600	\$16,067,540	\$63,706,658
Total	514	514	\$21,970,268	\$41,736,390	\$63,706,658	\$63,706,658

Increased Penalties – Sexual Battery

The bill increases the penalties for specified sexual battery against children. CJIC determined that this provision will have an insignificant impact on prison beds due to the low volume of offenses (43 imprisoned in FY 2012-13).

The bill also increases penalties for sexual battery when the offender does not use physical force. CJIC determined that this provision will have an indeterminate impact on prison beds since the age of the victim could not be determined.

Familial or Custodial Authority

The bill enhances the felony degree of sexual battery if the offender is a familial or custodial authority. CJIC determined that this provision will have an insignificant impact on prison beds since it only changes the maximum sentence and these offenders typically receive long sentences and have a high incarceration rate.

Increased Penalties – Lewd or Lascivious Offenses

The bill increases the penalties for specified lewd or lascivious offenses against children. CJIC determined that this provision will have an indeterminate impact on prison beds since the prior convictions could not be determined.

Minimum Mandatory Sentence

The bill increases the minimum mandatory sentence for dangerous sexual felony offenders to 50 years. CJIC determined that this provision will have an insignificant impact on prison beds since it only changes the maximum sentence and is a low volume sentence (14 offenders sentenced).

Mandatory Split Sentence

The bill requires the court to impose a split sentence in which an offender convicted of specified sexual offenses is sentenced to two years of community supervision after serving his or her term of imprisonment.

DOC states that the mandatory minimum two years of post-prison supervision will have limited impact.⁷⁹ In FY 2012-13, there were approximately 1,300 sex offenders released (based on offenses specified in the bill). Of those inmates, 900 had supervision to follow (either a split sentence or conditional release). The remaining 400 inmates had an average time between offense and prison release of 11 years. Therefore, since the bill would apply only to future offenses, DOC expects that the mandatory split provision would not be a significant increase in supervision population during the first years of implementation. DOC notes that the average time between offense and prison release will only increase because of the other provisions of the bill that encourage longer sentences and prohibit gain time for these inmates.⁸⁰

The Office of Economic and Demographic Research estimates that the impact of this provision will be minimal. The projected increase in community supervision probationers is projected to be only 20 by Fiscal Year 2016 – 2017, and 118 by Fiscal Year 2018 – 2019.

Statutes of Limitation – Lewd or Lascivious Offenses

CJIC determined that the impact of this provision of the bill is indeterminate. The bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

Conditions of Sex Offender Probation

The bill prohibits certain offenders from having obscene, pornographic or sexually stimulating material, regardless of whether the material is relevant to the offender's deviant behavior pattern. CJIC determined that this provision will have an indeterminate impact on prison beds since it cannot

⁷⁹ Senate Bill Analysis of SB 526, dated January 9, 2014 (citing an e-mail from Will Kendrick, Legislative Affairs Director for DOC (January 8, 2014) (on file with the Criminal Justice Subcommittee).

⁸⁰ *Id.*

be determined how many would violate this provision, however, this could result in more violations of supervision, which could have a negative prison bed impact.

Exposure of Sexual Organs

The bill increases the penalty for second or subsequent violations of s. 800.03, F.S., from a first degree misdemeanor to a third degree felony. CJIC determined that this provision will have an insignificant impact on prison (unranked third degree felony not likely to go to prison).

Unlawful Activity with Certain Minors

The bill broadens the definition of the term "sexual activity" for purposes of s. 794.05, F.S., (prohibiting a person 24 years of age or older from engaging in sexual activity with a person 16 or 17 years of age). Because this offense is a second degree felony, this could have a negative prison bed impact.

Voyeurism

The bill broadens the application of the voyeurism statute, which is a third degree felony for second or subsequent violations. While CJIC did not review this provision, though it is likely insignificant since the second or subsequent violation is an unranked third degree felony.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Exposure of Sexual Organs

The bill permits an LEO to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. This may result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which could have a negative jail bed impact.

Conditions of Sex Offender Probation

The bill prohibits certain offenders from having obscene, pornographic or sexually stimulating material, regardless of whether the material is relevant to the offender's deviant behavior pattern. This could result in more violations of supervision, which could have a negative jail bed impact.

Voyeurism

The bill broadens the application of the voyeurism statute, which is a first degree misdemeanor for first offenses. This could have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Conditions of Sex Offender Probation

Vagueness

A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement.⁸¹

Courts throughout the country are split as to whether a general ban on pornographic materials is unconstitutionally vague. For example, in *McVey v. State*, the court found that the condition prohibiting possession of pornographic or sexually explicit materials was unconstitutionally vague because it failed to clearly inform the offender what conduct was prohibited.⁸² Whereas in *Wilfong v. Commonwealth*, the court determined that a commonsense reading of "sexually arousing materials" does not render the phrase unconstitutionally vague.⁸³

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This language could be challenged as being unconstitutionally vague.

Probationer Rights

The Florida Supreme Court has found that "constitutional rights of probationers are limited by conditions of probation which are desirable for purposes of rehabilitation."⁸⁴ In other words, trial courts have broad discretion to impose various conditions of probation, but cannot impose a condition of probation that is not reasonably related to rehabilitation.⁸⁵ In determining whether a condition of probation is reasonably related to rehabilitation, courts look to whether the condition:

- Has a relationship to the crime of which the offender was convicted;
- Relates to conduct which is not in itself criminal; and
- Requires or forbids conduct which is not reasonably related to future criminality.⁸⁶

⁸¹ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

⁸² *McVey v. State*, 863 N.E.2d 434, 447 (Ind.Ct.App. 2007). Also see *State v. Bahl*, 193 P.3d 678, 688 (Wash. 2008).

⁸³ *Wilfong v. Commonwealth*, 175 S.W.3d 84, 99 (Ky.Ct.App. 2004). See also *Belt v. State*, 127 S.W.3d 277, 281-82 (Tex.Ct.App.2004) (condition prohibiting possession of "sexually stimulating" or "sexually oriented" material was not unconstitutionally vague); *Commonwealth v. Perreault*, 930 A.2d 553, 560 (Pa.Super.Ct. 2007) (a condition is not unconstitutionally vague when statutes provide definitions of the terms).

⁸⁴ *Biller v. State*, 618 So.2d 734 (Fla. 1993).

⁸⁵ *Nank v. State*, 646 So.2d 762 (Fla.2d DCA 1994).

⁸⁶ *Biller v. State*, 618 So.2d 734 (Fla.1993).

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This could be challenged as not being reasonably related to rehabilitation.

First Amendment

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."⁸⁷

In *Miller v. California*, the Supreme Court of the United States found that obscene materials are not protected by the First Amendment.⁸⁸ However, materials not considered to be obscene do receive First Amendment protections.

The bill prohibits persons subject to sex offender supervision from possessing pornographic or sexually stimulating material. While offenders have diminished constitutional rights by virtue of being on supervision, this provision could be challenged as violating an offender's First Amendment rights.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted seven amendments to the PCB and reported the PCB favorably. Amendments #1-#5 corrected statutory references; amendment #6 clarified that voyeurism can occur when someone secretly observes another's intimate areas whether in a public or private structure, and defined "intimate area;" and amendment #7 applied the provision relating to conditions of supervision to only those persons whose crimes were committed on or after October 1, 2014.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

⁸⁷ *NAACP v. Button*, 371 U.S. 415, 433 (1963).

⁸⁸ 413 U.S. 15 (1973).

A bill to be entitled

An act relating to sexual offenses; amending ss. 95.11 and 775.15, F.S.; eliminating statutes of limitations for commencement of criminal or civil actions relating to lewd and lascivious acts if the victim is under 16 years of age and the offender is 18 years of age or older at the time of the offense; providing applicability; amending s. 794.011, F.S.; revising and creating offenses involving sexual battery; providing criminal penalties; increasing felony degree of certain sexual battery offenses; amending s. 794.0115, F.S.; imposing a 50-year minimum mandatory sentence for dangerous sexual felony offenders; amending s. 794.05, F.S.; revising definition of the term "sexual activity;" amending s. 800.03, F.S.; increasing the classification of second and subsequent violations of the provision prohibiting unlawful exposure of sexual organs; amending s. 800.04, F.S.; revising and creating offenses involving lewd or lascivious battery and molestation; providing criminal penalties; increasing felony degree of certain lewd or lascivious battery and molestation offenses; amending s. 810.14, F.S.; providing that voyeurism includes secretly observing another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located a public or private

27 dwelling, structure, or conveyance; defining the term
 28 "intimate area"; amending s. 901.15, F.S.; authorizing
 29 an arrest without a warrant if there is probable cause
 30 to believe that a person has committed unlawful
 31 exposure of sexual organs in violation of specified
 32 provisions; amending s. 921.0022, F.S.; assigning new
 33 offense severity rankings for lewd or lascivious
 34 molestation and sexual battery offenses; amending s.
 35 921.0024, F.S.; providing that sentence points are
 36 multiplied for specified sex offenses committed by an
 37 adult upon a minor under certain circumstances;
 38 amending s. 944.275, F.S.; prohibiting award of gain-
 39 time for certain offenses; amending s. 948.012, F.S.;
 40 requiring split sentence for certain sexual offenses;
 41 amending s. 947.1405, F.S.; prohibiting certain
 42 conditional releasees from viewing, accessing, owning,
 43 or possessing any obscene, pornographic, or sexually
 44 stimulating material, regardless of such material's
 45 relevance to the offender's deviant behavior pattern;
 46 amending s. 948.30, F.S.; prohibiting certain
 47 probationers or community controllees from viewing,
 48 accessing, owning, or possessing any obscene,
 49 pornographic, or sexually stimulating material,
 50 regardless of such material's relevance to the
 51 offender's deviant behavior pattern; amending s.
 52 943.0435 and 944.607, F.S.; conforming provisions to

53 changes made by the act; providing an effective date.

54

55 Be It Enacted by the Legislature of the State of Florida:

56

57 Section 1. Subsection (9) of section 95.11, Florida
 58 Statutes, is amended to read:

59 95.11 Limitations other than for the recovery of real
 60 property.—Actions other than for recovery of real property shall
 61 be commenced as follows:

62 (9) SEXUAL ~~BATTERY~~ OFFENSES ON VICTIMS UNDER AGE 16.—

63 (a) An action related to an act constituting a violation
 64 of s. 794.011 involving a victim who was under the age of 16 at
 65 the time of the act may be commenced at any time. This paragraph
 66 ~~subsection~~ applies to any such action other than one which would
 67 have been time barred on or before July 1, 2010.

68 (b) An action related to an act constituting a violation
 69 of s. 800.04 involving a victim who was under the age of 16 and
 70 an offender 18 years of age or older at the time of the act may
 71 be commenced at any time. This paragraph applies to any such
 72 action other than one which would have been time barred on or
 73 before October 1, 2014.

74 Section 2. Subsection (18) is added to section 775.15,
 75 Florida Statutes, to read:

76 775.15 Time limitations; general time limitations;
 77 exceptions.—

78 (18) If the offense is a violation of s. 800.04, in which

79 the victim was under 16 years of age and the offender was 18 or
 80 older, a prosecution of the offense may commence at any time.
 81 This subsection applies to any offense that is not otherwise
 82 barred from prosecution on or after October 1, 2014.

83 Section 3. Subsections (4), (5), and (6), paragraph (b) of
 84 subsection (8), and subsections (9) and (10) of section 794.011,
 85 Florida Statutes, are amended to read:

86 794.011 Sexual battery.—

87 (4) (a) A person 18 years of age or older who commits
 88 sexual battery upon a person 12 years of age or older but
 89 younger than 18 years of age without that person's consent,
 90 under any of the ~~following~~ circumstances listed in paragraph
 91 (e), commits a felony of the first degree, punishable by a term
 92 of years not exceeding life or as provided in s. 775.082, s.
 93 775.083, s. 775.084, or s. 794.0115.†

94 (b) A person 18 years of age or older who commits sexual
 95 battery upon a person 18 years of age or older without that
 96 person's consent, under any of the circumstances listed in
 97 paragraph (e), commits a felony of the first degree, punishable
 98 as provided in s. 775.082, s. 775.083, s. 775.084, or s.
 99 794.0115.

100 (c) A person younger than 18 years of age who commits
 101 sexual battery upon a person 12 years of age or older without
 102 that person's consent, under any of the circumstances listed in
 103 paragraph (e), commits a felony of the first degree, punishable
 104 as provided in s. 775.082, s. 775.083, s. 775.084, or s.

105 | 794.0115.

106 | (d) A person commits a felony of the first degree,
 107 | punishable by a term of years not exceeding life or as provided
 108 | in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the
 109 | person commits sexual battery upon a person 12 years of age or
 110 | older without that person's consent, under any of the
 111 | circumstances listed in paragraph (e), and such person was
 112 | previously convicted of a violation of:

113 | 1. Section 787.01(2) or s. 787.02(2) when the violation
 114 | involved a victim who was a minor and, in the course of
 115 | committing that violation, the defendant committed against the
 116 | minor a sexual battery under this chapter or a lewd act under s.
 117 | 800.04 or s. 847.0135(5);

118 | 2. Section 787.01(3)(a)2. or 3.;

119 | 3. Section 787.02(3)(a)2. or 3.;

120 | 4. Section 800.04;

121 | 5. Section 825.1025;

122 | 6. Section 847.0135(5); or

123 | 7. This chapter, excluding subsection (10) of this
 124 | section.

125 | (e) The following circumstances apply to paragraphs (a)
 126 | through (d):

127 | 1. ~~(a)~~ ~~When~~ The victim is physically helpless to resist.

128 | 2. ~~(b)~~ ~~When~~ The offender coerces the victim to submit by
 129 | threatening to use force or violence likely to cause serious
 130 | personal injury on the victim, and the victim reasonably

131 believes that the offender has the present ability to execute
 132 the threat.

133 3.(e) ~~When~~ The offender coerces the victim to submit by
 134 threatening to retaliate against the victim, or any other
 135 person, and the victim reasonably believes that the offender has
 136 the ability to execute the threat in the future.

137 4.(d) ~~When~~ The offender, without the prior knowledge or
 138 consent of the victim, administers or has knowledge of someone
 139 else administering to the victim any narcotic, anesthetic, or
 140 other intoxicating substance that ~~which~~ mentally or physically
 141 incapacitates the victim.

142 5.(e) ~~When~~ The victim is mentally defective, and the
 143 offender has reason to believe this or has actual knowledge of
 144 this fact.

145 6.(f) ~~When~~ The victim is physically incapacitated.

146 7.(g) ~~When~~ The offender is a law enforcement officer,
 147 correctional officer, or correctional probation officer as
 148 defined in ~~by~~ s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
 149 is certified under ~~the provisions of~~ s. 943.1395 or is an
 150 elected official exempt from such certification by virtue of s.
 151 943.253, or any other person in a position of control or
 152 authority in a probation, community control, controlled release,
 153 detention, custodial, or similar setting, and such officer,
 154 official, or person is acting in such a manner as to lead the
 155 victim to reasonably believe that the offender is in a position
 156 of control or authority as an agent or employee of government.

157 (5) (a) A person 18 years of age or older who commits
 158 sexual battery upon a person 12 years of age or older but
 159 younger than 18 years of age, without that person's consent, and
 160 in the process thereof does not use physical force and violence
 161 likely to cause serious personal injury commits a felony of the
 162 first ~~second~~ degree, punishable as provided in s. 775.082, s.
 163 775.083, s. 775.084, or s. 794.0115.

164 (b) A person 18 years of age or older who commits sexual
 165 battery upon a person 18 years of age or older, without that
 166 person's consent, and in the process does not use physical force
 167 and violence likely to cause serious personal injury commits a
 168 felony of the second degree, punishable as provided in s.
 169 775.082, s. 775.083, s. 775.084, or s. 794.0115.

170 (c) A person younger than 18 years of age who commits
 171 sexual battery upon a person 12 years of age or older, without
 172 that person's consent, and in the process does not use physical
 173 force and violence likely to cause serious personal injury
 174 commits a felony of the second degree, punishable as provided in
 175 s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

176 (d) A person commits a felony of the first degree,
 177 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 178 s. 794.0115 if the a person commits sexual battery upon a person
 179 12 years of age or older, without that person's consent, and in
 180 the process does not use physical force and violence likely to
 181 cause serious personal injury and the person was previously
 182 convicted of a violation of:

183 1. Section 787.01(2) or s. 787.02(2) when the violation
 184 involved a victim who was a minor and, in the course of
 185 committing that violation, the defendant committed against the
 186 minor a sexual battery under this chapter or a lewd act under s.
 187 800.04 or s. 847.0135(5);

188 2. Section 787.01(3)(a)2. or 3.;

189 3. Section 787.02(3)(a)2. or 3.;

190 4. Section 800.04;

191 5. Section 825.1025;

192 6. Section 847.0135(5); or

193 7. This chapter, excluding subsection (10) of this
 194 section.

195 (6) (a) The offenses ~~offense~~ described in paragraphs (5)(a)
 196 through (c) are ~~subsection (5)is~~ included in any sexual battery
 197 offense charged under subsection (3) ~~or subsection (4)~~.

198 (b) The offense described in paragraph (5)(a) is included
 199 in an offense charged under paragraph (4)(a).

200 (c) The offense described in paragraph (5)(b) is included
 201 in an offense charged under paragraph (4)(b).

202 (d) The offense described in paragraph (5)(c) is included
 203 in an offense charged under paragraph (4)(c).

204 (e) The offense described in paragraph (5)(d) is included
 205 in an offense charged under paragraph (4)(d).

206 (8) Without regard to the willingness or consent of the
 207 victim, which is not a defense to prosecution under this
 208 subsection, a person who is in a position of familial or

209 custodial authority to a person less than 18 years of age and
 210 who:

211 (b) Engages in any act with that person while the person
 212 is 12 years of age or older but younger ~~less~~ than 18 years of
 213 age which constitutes sexual battery under paragraph (1)(h)
 214 commits a felony of the first degree, punishable by a term of
 215 years not exceeding life or as provided in s. 775.082, s.
 216 775.083, or s. 775.084.

217 (9) For prosecution under paragraph (4)(a), paragraph
 218 (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an
 219 offense committed under any of the circumstances listed in
 220 subparagraph (4)(e)7. ~~paragraph (4)(g)~~, acquiescence to a person
 221 reasonably believed by the victim to be in a position of
 222 authority or control does not constitute consent, and it is not
 223 a defense that the perpetrator was not actually in a position of
 224 control or authority if the circumstances were such as to lead
 225 the victim to reasonably believe that the person was in such a
 226 position.

227 (10) A ~~Any~~ person who falsely accuses a ~~any~~ person listed
 228 in subparagraph (4)(e)7. ~~paragraph (4)(g)~~ or other person in a
 229 position of control or authority as an agent or employee of
 230 government of violating paragraph (4)(a), paragraph (4)(b),
 231 paragraph (4)(c), or paragraph (4)(d) commits ~~(4)(g) is guilty~~
 232 ~~of~~ a felony of the third degree, punishable as provided in s.
 233 775.082, s. 775.083, or s. 775.084.

234 Section 4. Subsection (2) of section 794.0115, Florida

235 Statutes, is amended to read:

236 794.0115 Dangerous sexual felony offender; mandatory
237 sentencing.—

238 (2) Any person who is convicted of a violation of s.
239 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
240 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
241 (4); or s. 847.0145; or of any similar offense under a former
242 designation, which offense the person committed when he or she
243 was 18 years of age or older, and the person:

244 (a) Caused serious personal injury to the victim as a
245 result of the commission of the offense;

246 (b) Used or threatened to use a deadly weapon during the
247 commission of the offense;

248 (c) Victimized more than one person during the course of
249 the criminal episode applicable to the offense;

250 (d) Committed the offense while under the jurisdiction of
251 a court for a felony offense under the laws of this state, for
252 an offense that is a felony in another jurisdiction, or for an
253 offense that would be a felony if that offense were committed in
254 this state; or

255 (e) Has previously been convicted of a violation of s.
256 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
257 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
258 (4); s. 847.0145; of any offense under a former statutory
259 designation which is similar in elements to an offense described
260 in this paragraph; or of any offense that is a felony in another

261 jurisdiction, or would be a felony if that offense were
 262 committed in this state, and which is similar in elements to an
 263 offense described in this paragraph,

264
 265 is a dangerous sexual felony offender, who must be sentenced to
 266 a mandatory minimum term of 25 years imprisonment up to, and
 267 including, life imprisonment. If the offense described in this
 268 subsection was committed on or after October 1, 2014, a person
 269 who qualifies as a dangerous sexual felony offender pursuant to
 270 this subsection must be sentenced to a mandatory minimum term of
 271 50 years imprisonment up to, and including, life imprisonment.

272 Section 5. Subsection (1) of section 794.05, Florida
 273 Statutes, is amended to read:

274 794.05 Unlawful sexual activity with certain minors.—

275 (1) A person 24 years of age or older who engages in
 276 sexual activity with a person 16 or 17 years of age commits a
 277 felony of the second degree, punishable as provided in s.
 278 775.082, s. 775.083, or s. 775.084. As used in this section,
 279 "sexual activity" means oral, anal, or vaginal penetration by,
 280 or union with, the sexual organ of another or the anal or
 281 vaginal penetration of another by any other object; however,
 282 sexual activity does not include an act done for a bona fide
 283 medical purpose.

284 Section 6. Section 800.03, Florida Statutes, is amended to
 285 read:

286 800.03 Exposure of sexual organs.—

287 (1) It is unlawful to expose or exhibit one's sexual
 288 organs in public or on the private premises of another, or so
 289 near thereto as to be seen from such private premises, in a
 290 vulgar or indecent manner, or to be naked in public except in
 291 any place provided or set apart for that purpose. ~~Violation of~~
 292 ~~this section is a misdemeanor of the first degree, punishable as~~
 293 ~~provided in s. 775.082 or s. 775.083.~~ A mother's breastfeeding
 294 of her baby does not under any circumstance violate this
 295 section.

296 (2) A person who violates this section commits:

297 (a) For a first offense, a misdemeanor of the first
 298 degree, punishable as provided in s. 775.082 or s. 775.083.

299 (b) For a second or subsequent offense, a felony of the
 300 third degree, punishable as provided in s. 775.082, s. 775.083,
 301 or s. 775.084.

302 Section 7. Subsections (4) and (5) of section 800.04,
 303 Florida Statutes, are amended to read:

304 800.04 Lewd or lascivious offenses committed upon or in
 305 the presence of persons less than 16 years of age.-

306 (4) LEWD OR LASCIVIOUS BATTERY. ~~A person who:~~

307 (a) A person commits lewd or lascivious battery by:

308 1. Engaging in sexual activity with a person 12 years of
 309 age or older but less than 16 years of age; or

310 2. Encouraging, forcing, or enticing any person less than
 311 16 years of age to engage in sadomasochistic abuse, sexual
 312 bestiality, prostitution, or any other act involving sexual

313 activity.

314 (b) Except as provided in paragraph (c), an offender who
 315 commits lewd or lascivious battery commits a felony of the
 316 second degree, punishable as provided in s. 775.082, s. 775.083,
 317 or s. 775.084.

318 (c) A person commits a felony of the first degree,
 319 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
 320 if the person is an offender 18 years of age or older who
 321 commits lewd or lascivious battery and was previously convicted
 322 of a violation of:

323 1. Section 787.01(2) or s. 787.02(2) when the violation
 324 involved a victim who was a minor and, in the course of
 325 committing that violation, the defendant committed against the
 326 minor a sexual battery under chapter 794 or a lewd act under
 327 this section or s. 847.0135(5);

328 2. Section 787.01(3)(a)2. or 3.;

329 3. Section 787.02(3)(a)2. or 3.;

330 4. Chapter 794, excluding s. 794.011(10);

331 5. Section 825.1025;

332 6. Section 847.0135(5); or

333 7. This section.

334 ~~(a) Engages in sexual activity with a person 12 years of~~
 335 ~~age or older but less than 16 years of age; or~~

336 ~~(b) Encourages, forces, or entices any person less than 16~~
 337 ~~years of age to engage in sadomasochistic abuse, sexual~~
 338 ~~bestiality, prostitution, or any other act involving sexual~~

339 activity

340

341 ~~commits lewd or lascivious battery, a felony of the second~~
 342 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
 343 ~~775.084.~~

344 (5) LEWD OR LASCIVIOUS MOLESTATION.—

345 (a) A person who intentionally touches in a lewd or
 346 lascivious manner the breasts, genitals, genital area, or
 347 buttocks, or the clothing covering them, of a person less than
 348 16 years of age, or forces or entices a person under 16 years of
 349 age to so touch the perpetrator, commits lewd or lascivious
 350 molestation.

351 (b) An offender 18 years of age or older who commits lewd
 352 or lascivious molestation against a victim less than 12 years of
 353 age commits a life felony, punishable as provided in s.
 354 775.082(3)(a)4.

355 (c)1. An offender less than 18 years of age who commits
 356 lewd or lascivious molestation against a victim less than 12
 357 years of age; or

358 2. An offender 18 years of age or older who commits lewd
 359 or lascivious molestation against a victim 12 years of age or
 360 older but less than 16 years of age

361

362 commits a felony of the second degree, punishable as provided in
 363 s. 775.082, s. 775.083, or s. 775.084.

364 (d) An offender less than 18 years of age who commits lewd

365 or lascivious molestation against a victim 12 years of age or
 366 older but less than 16 years of age commits a felony of the
 367 third degree, punishable as provided in s. 775.082, s. 775.083,
 368 or s. 775.084.

369 (e) A person commits a felony of the first degree,
 370 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
 371 if the person is 18 years of age or older and commits lewd or
 372 lascivious molestation against a victim 12 years of age or older
 373 but less than 16 years of age and the person was previously
 374 convicted of a violation of:

375 1. Section 787.01(2) or s. 787.02(2) when the violation
 376 involved a victim who was a minor and, in the course of
 377 committing the violation, the defendant committed against the
 378 minor a sexual battery under chapter 794 or a lewd act under
 379 this section or s. 847.0135(5);

380 2. Section 787.01(3)(a)2. or 3.;

381 3. Section 787.02(3)(a)2. or 3.;

382 4. Chapter 794, excluding s. 794.011(10);

383 5. Section 825.1025;

384 6. Section 847.0135(5); or

385 7. This section.

386 Section 8. Subsection (1) of section 810.14, Florida
 387 Statutes, is amended to read:

388 810.14 Voyeurism prohibited; penalties.—

389 (1) A person commits the offense of voyeurism when he or
 390 she, with lewd, lascivious, or indecent intent:7

391 (a) Secretly observes another person when the other person
 392 is located in a dwelling, structure, or conveyance and such
 393 location provides a reasonable expectation of privacy; or

394 (b) Secretly observes another person's intimate areas in
 395 which the person has a reasonable expectation of privacy, when
 396 the other person is located in a public or private dwelling,
 397 structure, or conveyance. As used in this paragraph, the term
 398 "intimate area" mans any portion of a person's body or
 399 undergarments that is covered by clothing and intended to be
 400 protected from public view.

401 Section 9. Paragraph (d) is added to subsection (9) of
 402 section 901.15, Florida Statutes, to read:

403 901.15 When arrest by officer without warrant is lawful.—A
 404 law enforcement officer may arrest a person without a warrant
 405 when:

406 (9) There is probable cause to believe that the person has
 407 committed:

408 (d) Exposure of sexual organs in violation of s. 800.03.

409 Section 10. Paragraphs (g), (h), and (i) of subsection (3)
 410 of section 921.0022, Florida Statutes, are amended to read:

411 921.0022 Criminal Punishment Code; offense severity
 412 ranking chart.—

413 (3) OFFENSE SEVERITY RANKING CHART

414 (g) LEVEL 7

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	Florida Statute	Felony Degree	Description
416	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
417	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
418	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
419	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
420	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration,

			permanent disability, or death.
421	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
422	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
423	456.065 (2)	3rd	Practicing a health care profession without a license.
424	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
425	458.327 (1)	3rd	Practicing medicine without a license.
426	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
427	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
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429	461.012(1)	3rd	Practicing podiatric medicine without a license.
430	462.17	3rd	Practicing naturopathy without a license.
431	463.015(1)	3rd	Practicing optometry without a license.
432	464.016(1)	3rd	Practicing nursing without a license.
433	465.015(2)	3rd	Practicing pharmacy without a license.
434	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
435	467.201	3rd	Practicing midwifery without a license.
436	468.366	3rd	Delivering respiratory care services without a license.
	483.828(1)	3rd	Practicing as clinical

			laboratory personnel without a license.
437	483.901(9)	3rd	Practicing medical physics without a license.
438	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
439	484.053	3rd	Dispensing hearing aids without a license.
440	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
441	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
442	560.125(5)(a)	3rd	Money services business by

			unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
443	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
444	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew <u>driver</u> driver's license or identification card; other registration violations.
445	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
446	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
447	782.051(3)	2nd	Attempted felony murder of a

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person by a person other than
the perpetrator or the
perpetrator of an attempted
felony.

448

782.07(1)

2nd

Killing of a human being by the
act, procurement, or culpable
negligence of another
(manslaughter).

449

782.071

2nd

Killing of a human being or
viable fetus by the operation
of a motor vehicle in a
reckless manner (vehicular
homicide).

450

782.072

2nd

Killing of a human being by the
operation of a vessel in a
reckless manner (vessel
homicide).

451

784.045(1)(a)1.

2nd

Aggravated battery;
intentionally causing great
bodily harm or disfigurement.

452

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453	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
454	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
455	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
456	784.048(7)	3rd	Aggravated stalking; violation of court order.
457	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
458	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
459	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
460	784.081(1)	1st	Aggravated battery on specified official or employee.

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461	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
462	784.083(1)	1st	Aggravated battery on code inspector.
463	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
464	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
465	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
466	790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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467	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
468	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
469	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
470	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
471	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian,

472			or a person in custodial authority to a victim younger than 18 years of age.
473	796.03	2nd	Procuring any person under 16 years for prostitution.
474	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim <u>younger</u> less than 12 years of age; offender <u>younger</u> less than 18 years.
475	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but <u>younger</u> less than 16 years; offender 18 years or older.
476	<u>800.04(5)(e)</u>	<u>1st</u>	<u>Lewd or lascivious molestation;</u> <u>victim 12 years of age or older</u> <u>but younger than 16 years;</u> <u>offender 18 years or older;</u> <u>prior conviction for specified</u> <u>sex offense.</u>
	806.01(2)	2nd	Maliciously damage structure by

			fire or explosive.
477			
478	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
479	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
480	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
481	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
482	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
483			

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484	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
485	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
486	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
487	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
488	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
489	812.131(2)(a)	2nd	Robbery by sudden snatching.
490	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

491	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
492	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
493	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
494	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
495	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
496	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.

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497	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
498	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
499	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
500	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
501	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
502	838.015	2nd	Bribery.
	838.016	2nd	Unlawful compensation or reward

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			for official behavior.
503	838.021(3)(a)	2nd	Unlawful harm to a public servant.
504	838.22	2nd	Bid tampering.
505	843.0855(2)	3rd	Impersonation of a public officer or employee.
506	843.0855(3)	3rd	Unlawful simulation of legal process.
507	843.0855(4)	3rd	Intimidation of a public officer or employee.
508	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
509	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
510	872.06	2nd	Abuse of a dead human body.
511			

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512	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
513	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
514	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s.

			893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
515	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
516	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
517	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
518	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
519	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

			200 grams.
520	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
521	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
522	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
523	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
524	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
525	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200

			grams.
526	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
527	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
528	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
529	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
530	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
531			

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532	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
533	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
534	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
535	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
536	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or

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537			conceal a sexual offender.
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
538			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
539			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
540			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
541			
542	(h)	LEVEL 8	
543			
	Florida	Felony	
	Statute	Degree	Description
544			

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545	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
546	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
547	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
548	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
549	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
550	560.123(8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling

			or exceeding \$20,000, but less than \$100,000.
551	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
552	777.03(2)(a)	1st	Accessory after the fact, capital felony.
553	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
554	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not

enumerated in s. 782.04(3).

555

782.071(1)(b) 1st Committing vehicular homicide
and failing to render aid or
give information.

556

782.072(2) 1st Committing vessel homicide and
failing to render aid or give
information.

557

787.06(3)(b) 1st Human trafficking using
coercion for commercial sexual
activity.

558

787.06(3)(c) 1st Human trafficking using
coercion for labor and services
of an unauthorized alien.

559

787.06(3)(f) 1st Human trafficking using
coercion for commercial sexual
activity by the transfer or
transport of any individual
from outside Florida to within
the state.

560

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561	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
562	<u>794.011(5)(a)</u>	<u>1st</u>	<u>Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.</u>
563	<u>794.011(5)(b)</u>	<u>2nd</u>	<u>Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.</u>
564	<u>794.011(5)(c)</u>	<u>2nd</u>	<u>Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.</u>
	<u>794.011(5)(d)</u>	<u>1st</u>	<u>Sexual battery; victim 12 years</u>

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of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.

565

~~794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.~~

566

794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.

567

800.04(4)(b) 2nd Lewd or lascivious battery.

568

800.04(4)(c) 1st Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.

569

~~800.04(4) 2nd Lewd or lascivious battery.~~

570

571	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
572	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
573	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
574	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
575	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
576	812.13(2)(b)	1st	Robbery with a weapon.
577	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

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578	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
579	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
580	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
581	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
582	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.

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583	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
584	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
585	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
586	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
587	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
588	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

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589	860.16	1st	Aircraft piracy.
	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
590			
	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
591			
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
592			
	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
593			
	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
594			
	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than

			28 grams.
595	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
596	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
597	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
598	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
599	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
600	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than

			10 kilograms.
601	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
602	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
603	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
604	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
605	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
606	896.101(5)(b)	2nd	Money laundering, financial

607			transactions totaling or exceeding \$20,000, but less than \$100,000.
	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
608			
609	(i)	LEVEL 9	
610			
	Florida Statute	Felony Degree	Description
611	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
612	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
613	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
614			

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615	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
616	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
617	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
618	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
619	775.0844	1st	Aggravated white collar crime.
620	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
	782.04(3)	1st, PBL	Accomplice to murder in

			connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
621	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
622	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
623	787.01(1)(a)1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
624	787.01(1)(a)2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
625	787.01(1)(a)4.	1st, PBL	Kidnapping with intent to

interfere with performance of
any governmental or political
function.

626

787.02(3)(a) 1st False imprisonment; child under
age 13; perpetrator also
commits aggravated child abuse,
sexual battery, or lewd or
lascivious battery,
molestation, conduct, or
exhibition.

627

787.06(3)(d) 1st Human trafficking using
coercion for commercial sexual
activity of an unauthorized
alien.

628

787.06(3)(g) 1st,PBL Human trafficking for
commercial sexual activity of a
child under the age of 18.

629

787.06(4) 1st Selling or buying of minors
into human trafficking.

630

790.161 1st Attempted capital destructive

			device offense.
631	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
632	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
633	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
634	<u>794.011(4)(a)</u>	<u>1st,PBL</u>	<u>Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.</u>
635	<u>794.011(4)(b)</u>	<u>1st</u>	<u>Sexual battery, certain circumstances; victim and offender 18 years of age or older.</u>
636			

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637	<u>794.011(4)(c)</u>	<u>1st</u>	<u>Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.</u>
638	<u>794.011(4)(d)</u>	<u>1st,PBL</u>	<u>Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.</u>
639	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
640	794.011(8)(b)	<u>1st,PBL</u>	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
641	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
	796.035	1st	Selling or buying of minors

into prostitution.

642

800.04 (5) (b) Life Lewd or lascivious molestation;
victim less than 12 years;
offender 18 years or older.

643

812.13 (2) (a) 1st, PBL Robbery with firearm or other
deadly weapon.

644

812.133 (2) (a) 1st, PBL Carjacking; firearm or other
deadly weapon.

645

812.135 (2) (b) 1st Home-invasion robbery with
weapon.

646

817.535 (3) (b) 1st Filing false lien or other
unauthorized document; second
or subsequent offense; property
owner is a public officer or
employee.

647

817.535 (4) (a) 2. 1st Filing false claim or other
unauthorized document;
defendant is incarcerated or
under supervision.

648

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649	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
650	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
651	827.03(2)(a)	1st	Aggravated child abuse.
652	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
653	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
	859.01	1st	Poisoning or introducing

bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.

654

893.135 1st Attempted capital trafficking offense.

655

893.135(1)(a)3. 1st Trafficking in cannabis, more than 10,000 lbs.

656

893.135 1st Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
(1)(b)1.c.

657

893.135 1st Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
(1)(c)1.c.

658

893.135 1st Trafficking in phencyclidine, more than 400 grams.
(1)(d)1.c.

659

893.135 1st Trafficking in methaqualone,

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660	(1) (e) 1.c.		more than 25 kilograms.
661	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
662	893.135 (1) (h) 1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.
663	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
664	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
665	896.101(5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
666	896.104(4) (a) 3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
667	Section 11. Subsection (1) of section 921.0024, Florida		

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668 Statutes, is amended to read:

669 921.0024 Criminal Punishment Code; worksheet computations;
670 scoresheets.-

671 (1)(a) The Criminal Punishment Code worksheet is used to
672 compute the subtotal and total sentence points as follows:

673 FLORIDA CRIMINAL PUNISHMENT CODE

674 WORKSHEET

675 OFFENSE SCORE

676 Primary Offense

677

Level	Sentence Points	=	Total
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678

10	116	=
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679

9	92	=
---	----	---	-------

680

8	74	=
---	----	---	-------

681

7	56	=
---	----	---	-------

682

6	36	=
---	----	---	-------

683

5	28	=
---	----	---	-------

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685	4	22	=
686	3	16	=
687	2	10	=
688	1	4	=
689				
690				Total
691				
692		Additional Offenses		
693	Level	Sentence Points	Counts	Total
694	10	58	x	=
695	9	46	x	=
696	8	37	x	=
697	7	28	x	=

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698	6	18	x	=
699	5	5.4	x	=
700	4	3.6	x	=
701	3	2.4	x	=
702	2	1.2	x	=
703	1	0.7	x	=
704	M	0.2	x	=
705						
706						Total
707						
708				Victim Injury		
709	Level		Sentence		Number	Total
			Points			
	2nd degree		240	x	=

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710	murder- death					
	Death	120	x	=
711						
	Severe	40	x	=
712						
	Moderate	18	x	=
713						
	Slight	4	x	=
714						
	Sexual penetration	80	x	....	=	....
715						
	Sexual contact	40	x	....	=	....
716						
717						
						Total
718						
719	Primary Offense + Additional Offenses + Victim Injury =					
720	TOTAL OFFENSE SCORE					
721	PRIOR RECORD SCORE					
722						

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	Prior Record				
	Level	Sentence Points		Number	Total
723					
724	10	29	x	=
725	9	23	x	=
726	8	19	x	=
727	7	14	x	.....	= .....
728	6	9	x	.....	= .....
729	5	3.6	x	.....	= .....
730	4	2.4	x	.....	= .....
731	3	1.6	x	.....	= .....
732	2	0.8	x	.....	= .....
733	1	0.5	x	.....	= .....
734					

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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735	M	0.2	x	=
736						Total
737						
738						TOTAL OFFENSE SCORE.....
739						TOTAL PRIOR RECORD SCORE.....
740						LEGAL STATUS.....
741						COMMUNITY SANCTION VIOLATION.....
742						PRIOR SERIOUS FELONY.....
743						PRIOR CAPITAL FELONY.....
744						FIREARM OR SEMIAUTOMATIC WEAPON.....
745						SUBTOTAL.....
746						PRISON RELEASEE REOFFENDER (no) (yes).....
747						VIOLENT CAREER CRIMINAL (no) (yes).....
748						HABITUAL VIOLENT OFFENDER (no) (yes).....
749						HABITUAL OFFENDER (no) (yes).....
750						DRUG TRAFFICKER (no) (yes) (x multiplier).....
751						LAW ENF. PROTECT. (no) (yes) (x multiplier).....
752						MOTOR VEHICLE THEFT (no) (yes) (x multiplier).....
753						CRIMINAL GANG OFFENSE (no) (yes) (x multiplier).....
754						DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no) (yes)
755						(x multiplier).....
756						<u>ADULT-ON-MINOR SEX OFFENSE (no) (yes) (x multiplier).....</u>
757						.....

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines

784 or make restitution payments.

785 b. Twenty-four (24) community sanction violation points
 786 are assessed for the violation and for each successive violation
 787 of felony probation or community control where the violation
 788 includes a new felony conviction.

789
 790 Multiple counts of community sanction violations before the
 791 sentencing court shall not be a basis for multiplying the
 792 assessment of community sanction violation points.

793
 794 Prior serious felony points: If the offender has a primary
 795 offense or any additional offense ranked in level 8, level 9, or
 796 level 10, and one or more prior serious felonies, a single
 797 assessment of thirty (30) points shall be added. For purposes of
 798 this section, a prior serious felony is an offense in the
 799 offender's prior record that is ranked in level 8, level 9, or
 800 level 10 under s. 921.0022 or s. 921.0023 and for which the
 801 offender is serving a sentence of confinement, supervision, or
 802 other sanction or for which the offender's date of release from
 803 confinement, supervision, or other sanction, whichever is later,
 804 is within 3 years before the date the primary offense or any
 805 additional offense was committed.

806
 807 Prior capital felony points: If the offender has one or more
 808 prior capital felonies in the offender's criminal record, points
 809 shall be added to the subtotal sentence points of the offender

810 equal to twice the number of points the offender receives for
 811 the primary offense and any additional offense. A prior capital
 812 felony in the offender's criminal record is a previous capital
 813 felony offense for which the offender has entered a plea of nolo
 814 contendere or guilty or has been found guilty; or a felony in
 815 another jurisdiction which is a capital felony in that
 816 jurisdiction, or would be a capital felony if the offense were
 817 committed in this state.

818

819 Possession of a firearm, semiautomatic firearm, or machine gun:
 820 If the offender is convicted of committing or attempting to
 821 commit any felony other than those enumerated in s. 775.087(2)
 822 while having in his or her possession: a firearm as defined in
 823 s. 790.001(6), an additional eighteen (18) sentence points are
 824 assessed; or if the offender is convicted of committing or
 825 attempting to commit any felony other than those enumerated in
 826 s. 775.087(3) while having in his or her possession a
 827 semiautomatic firearm as defined in s. 775.087(3) or a machine
 828 gun as defined in s. 790.001(9), an additional twenty-five (25)
 829 sentence points are assessed.

830

831 Sentencing multipliers:

832

833 Drug trafficking: If the primary offense is drug trafficking
 834 under s. 893.135, the subtotal sentence points are multiplied,
 835 at the discretion of the court, for a level 7 or level 8

836 offense, by 1.5. The state attorney may move the sentencing
 837 court to reduce or suspend the sentence of a person convicted of
 838 a level 7 or level 8 offense, if the offender provides
 839 substantial assistance as described in s. 893.135(4).
 840 Law enforcement protection: If the primary offense is a
 841 violation of the Law Enforcement Protection Act under s.
 842 775.0823(2), (3), or (4), the subtotal sentence points are
 843 multiplied by 2.5. If the primary offense is a violation of s.
 844 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
 845 are multiplied by 2.0. If the primary offense is a violation of
 846 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 847 Protection Act under s. 775.0823(10) or (11), the subtotal
 848 sentence points are multiplied by 1.5.
 849
 850 Grand theft of a motor vehicle: If the primary offense is grand
 851 theft of the third degree involving a motor vehicle and in the
 852 offender's prior record, there are three or more grand thefts of
 853 the third degree involving a motor vehicle, the subtotal
 854 sentence points are multiplied by 1.5.
 855
 856 Offense related to a criminal gang: If the offender is convicted
 857 of the primary offense and committed that offense for the
 858 purpose of benefiting, promoting, or furthering the interests of
 859 a criminal gang as defined in s. 874.03, the subtotal sentence
 860 points are multiplied by 1.5. If applying the multiplier results
 861 in the lowest permissible sentence exceeding the statutory

862 maximum sentence for the primary offense under chapter 775, the
 863 court may not apply the multiplier and must sentence the
 864 defendant to the statutory maximum sentence.

865
 866 Domestic violence in the presence of a child: If the offender is
 867 convicted of the primary offense and the primary offense is a
 868 crime of domestic violence, as defined in s. 741.28, which was
 869 committed in the presence of a child under 16 years of age who
 870 is a family or household member as defined in s. 741.28(3) with
 871 the victim or perpetrator, the subtotal sentence points are
 872 multiplied by 1.5.

873
 874 Adult-on-minor sex offense: If the offender was 18 years of age
 875 or older and the victim was younger than 18 years of age at the
 876 time the offender committed the primary offense, and if the
 877 primary offense was an offense committed on or after October 1,
 878 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
 879 violation involved a victim who was a minor and, in the course
 880 of committing that violation, the defendant committed a sexual
 881 battery under chapter 794 or a lewd act under s. 800.04 or s.
 882 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
 883 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 884 800.04; or s. 847.0135(5), the subtotal sentence points are
 885 multiplied by 2.0. If applying the multiplier results in the
 886 lowest permissible sentence exceeding the statutory maximum
 887 sentence for the primary offense under chapter 775, the court

888 may not apply the multiplier and must sentence the defendant to
 889 the statutory maximum sentence.

890 Section 12. Paragraph (e) is added to subsection (4) of
 891 section 944.275, Florida Statutes, to read:

892 944.275 Gain-time.—

893 (4)

894 (e) Notwithstanding subparagraph (b)3., for sentences
 895 imposed for offenses committed on or after October 1, 2014, the
 896 department may not grant incentive gain-time if the offense is a
 897 violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s.
 898 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 899 800.04; s. 825.1025; or s. 847.0135(5).

900 Section 13. Subsection (1) of section 948.012, Florida
 901 Statutes, is amended, and subsection (5) is added to that
 902 section, to read:

903 948.012 Split sentence of probation or community control
 904 and imprisonment.—

905 (1) If ~~Whenever~~ punishment by imprisonment for a
 906 misdemeanor or a felony, except for a capital felony, is
 907 prescribed, the court, ~~in its discretion,~~ may, at the time of
 908 sentencing, impose a split sentence whereby the defendant is to
 909 be placed on probation or, with respect to any such felony, into
 910 community control upon completion of any specified period of
 911 such sentence which may include a term of years or less. In such
 912 case, the court shall stay and withhold the imposition of the
 913 remainder of sentence imposed upon the defendant and direct that

914 the defendant be placed upon probation or into community control
 915 after serving such period as may be imposed by the court. The
 916 period of probation or community control shall commence
 917 immediately upon the release of the defendant from
 918 incarceration, whether by parole or gain-time allowances.

919 (5) (a) Effective for offenses committed on or after
 920 October 1, 2014, if the court imposes a term of years in
 921 accordance with s. 775.082 that is less than the maximum
 922 sentence for the offense, the court must impose a split sentence
 923 pursuant to subsection (1) for any person who is convicted of a
 924 violation of:

- 925 1. Section 782.04(1)(a)2.c.;
- 926 2. Section 787.01(3)(a)2. or 3.;
- 927 3. Section 787.02(3)(a)2. or 3.;
- 928 4. Section 794.011, excluding s. 794.011(10);
- 929 5. Section 800.04;
- 930 6. Section 825.1025; or
- 931 7. Section 847.0135(5).

932 (b) The probation or community control portion of the
 933 split sentence imposed by the court must extend for at least 2
 934 years. However, if the term of years imposed by the court
 935 extends to within 2 years of the maximum sentence for the
 936 offense, the probation or community control portion of the split
 937 sentence must extend for the remainder of the maximum sentence.

938 Section 14. Subsection (13) is added to section 947.1405,
 939 Florida Statutes, to read:

940 947.1405 Conditional release program.-
 941 (13) Effective for a releasee whose crime was committed on
 942 or after October 1, 2014, in violation of chapter 794, s.
 943 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition
 944 to any other provision of this section, the commission must
 945 impose a condition prohibiting the releasee from viewing,
 946 accessing, owning, or possessing any obscene, pornographic, or
 947 sexually stimulating visual or auditory material, unless
 948 otherwise indicated in the treatment plan provided by a
 949 qualified practitioner in the sexual offender treatment program.
 950 Visual or auditory material includes, but is not limited to,
 951 telephone, electronic media, computer programs, and computer
 952 services.

953 Section 15. Subsection (5) is added to section 948.30,
 954 Florida Statutes, to read:

955 948.30 Additional terms and conditions of probation or
 956 community control for certain sex offenses.-Conditions imposed
 957 pursuant to this section do not require oral pronouncement at
 958 the time of sentencing and shall be considered standard
 959 conditions of probation or community control for offenders
 960 specified in this section.

961 (5) Effective for a probationer or community controllee
 962 whose crime was committed on or after October 1, 2014, and who
 963 is placed on probation or community control for a violation of
 964 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
 965 847.0145, in addition to all other conditions imposed, the court

966 | must impose a condition prohibiting the probationer or community
 967 | controllee from viewing, accessing, owning, or possessing any
 968 | obscene, pornographic, or sexually stimulating visual or
 969 | auditory material, unless otherwise indicated in the treatment
 970 | plan provided by a qualified practitioner in the sexual offender
 971 | treatment program. Visual or auditory material includes, but is
 972 | not limited to, telephone, electronic media, computer programs,
 973 | and computer services.

974 | Section 16. Paragraph (a) of subsection (1), paragraph (a)
 975 | of subsection (11), and paragraph (b) of subsection (14) of
 976 | section 943.0435, Florida Statutes, are amended to read:

977 | 943.0435 Sexual offenders required to register with the
 978 | department; penalty.—

979 | (1) As used in this section, the term:

980 | (a)1. "Sexual offender" means a person who meets the
 981 | criteria in sub-subparagraph a., sub-subparagraph b., sub-
 982 | subparagraph c., or sub-subparagraph d., as follows:

983 | a.(I) Has been convicted of committing, or attempting,
 984 | soliciting, or conspiring to commit, any of the criminal
 985 | offenses proscribed in the following statutes in this state or
 986 | similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 987 | or s. 787.025(2)(c), where the victim is a minor and the
 988 | defendant is not the victim's parent or guardian; s.
 989 | 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 990 | 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 991 | 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,

992 | excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 993 | or s. 985.701(1); or any similar offense committed in this state
 994 | which has been redesignated from a former statute number to one
 995 | of those listed in this sub-sub-subparagraph; and

996 | (II) Has been released on or after October 1, 1997, from
 997 | the sanction imposed for any conviction of an offense described
 998 | in sub-sub-subparagraph (I). For purposes of sub-sub-
 999 | subparagraph (I), a sanction imposed in this state or in any
 1000 | other jurisdiction includes, but is not limited to, a fine,
 1001 | probation, community control, parole, conditional release,
 1002 | control release, or incarceration in a state prison, federal
 1003 | prison, private correctional facility, or local detention
 1004 | facility;

1005 | b. Establishes or maintains a residence in this state and
 1006 | who has not been designated as a sexual predator by a court of
 1007 | this state but who has been designated as a sexual predator, as
 1008 | a sexually violent predator, or by another sexual offender
 1009 | designation in another state or jurisdiction and was, as a
 1010 | result of such designation, subjected to registration or
 1011 | community or public notification, or both, or would be if the
 1012 | person were a resident of that state or jurisdiction, without
 1013 | regard to whether the person otherwise meets the criteria for
 1014 | registration as a sexual offender;

1015 | c. Establishes or maintains a residence in this state who
 1016 | is in the custody or control of, or under the supervision of,
 1017 | any other state or jurisdiction as a result of a conviction for

1018 committing, or attempting, soliciting, or conspiring to commit,
 1019 any of the criminal offenses proscribed in the following
 1020 statutes or similar offense in another jurisdiction: s. 787.01,
 1021 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1022 the defendant is not the victim's parent or guardian; s.
 1023 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 1024 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1025 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1026 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1027 or s. 985.701(1); or any similar offense committed in this state
 1028 which has been redesignated from a former statute number to one
 1029 of those listed in this sub-subparagraph; or

1030 d. On or after July 1, 2007, has been adjudicated
 1031 delinquent for committing, or attempting, soliciting, or
 1032 conspiring to commit, any of the criminal offenses proscribed in
 1033 the following statutes in this state or similar offenses in
 1034 another jurisdiction when the juvenile was 14 years of age or
 1035 older at the time of the offense:

1036 (I) Section 794.011, excluding s. 794.011(10);

1037 (II) Section 800.04(4)(a) ~~800.04(4)(b)~~ where the victim is
 1038 under 12 years of age or where the court finds sexual activity
 1039 by the use of force or coercion;

1040 (III) Section 800.04(5)(c)1. where the court finds
 1041 molestation involving unclothed genitals; or

1042 (IV) Section 800.04(5)(d) where the court finds the use of
 1043 force or coercion and unclothed genitals.

1044 2. For all qualifying offenses listed in sub-subparagraph
 1045 (1)(a)1.d., the court shall make a written finding of the age of
 1046 the offender at the time of the offense.

1047
 1048 For each violation of a qualifying offense listed in this
 1049 subsection, the court shall make a written finding of the age of
 1050 the victim at the time of the offense. For a violation of s.
 1051 800.04(4), the court shall additionally make a written finding
 1052 indicating that the offense did or did not involve sexual
 1053 activity and indicating that the offense did or did not involve
 1054 force or coercion. For a violation of s. 800.04(5), the court
 1055 shall additionally make a written finding that the offense did
 1056 or did not involve unclothed genitals or genital area and that
 1057 the offense did or did not involve the use of force or coercion.

1058 (11) Except as provided in s. 943.04354, a sexual offender
 1059 must maintain registration with the department for the duration
 1060 of his or her life, unless the sexual offender has received a
 1061 full pardon or has had a conviction set aside in a
 1062 postconviction proceeding for any offense that meets the
 1063 criteria for classifying the person as a sexual offender for
 1064 purposes of registration. However, a sexual offender:

1065 (a)1. Who has been lawfully released from confinement,
 1066 supervision, or sanction, whichever is later, for at least 25
 1067 years and has not been arrested for any felony or misdemeanor
 1068 offense since release, provided that the sexual offender's
 1069 requirement to register was not based upon an adult conviction:

- 1070 a. For a violation of s. 787.01 or s. 787.02;
- 1071 b. For a violation of s. 794.011, excluding s.
- 1072 794.011(10);
- 1073 c. For a violation of s. 800.04(4)(a) ~~800.04(4)(b)~~ where
- 1074 the court finds the offense involved a victim under 12 years of
- 1075 age or sexual activity by the use of force or coercion;
- 1076 d. For a violation of s. 800.04(5)(b);
- 1077 e. For a violation of s. 800.04(5)c.2. where the court
- 1078 finds the offense involved unclothed genitals or genital area;
- 1079 f. For any attempt or conspiracy to commit any such
- 1080 offense; or
- 1081 g. For a violation of similar law of another jurisdiction,
- 1082
- 1083 may petition the criminal division of the circuit court of the
- 1084 circuit in which the sexual offender resides for the purpose of
- 1085 removing the requirement for registration as a sexual offender.
- 1086 2. The court may grant or deny relief if the offender
- 1087 demonstrates to the court that he or she has not been arrested
- 1088 for any crime since release; the requested relief complies with
- 1089 the provisions of the federal Adam Walsh Child Protection and
- 1090 Safety Act of 2006 and any other federal standards applicable to
- 1091 the removal of registration requirements for a sexual offender
- 1092 or required to be met as a condition for the receipt of federal
- 1093 funds by the state; and the court is otherwise satisfied that
- 1094 the offender is not a current or potential threat to public
- 1095 safety. The state attorney in the circuit in which the petition

1096 is filed must be given notice of the petition at least 3 weeks
 1097 before the hearing on the matter. The state attorney may present
 1098 evidence in opposition to the requested relief or may otherwise
 1099 demonstrate the reasons why the petition should be denied. If
 1100 the court denies the petition, the court may set a future date
 1101 at which the sexual offender may again petition the court for
 1102 relief, subject to the standards for relief provided in this
 1103 subsection.

1104 3. The department shall remove an offender from
 1105 classification as a sexual offender for purposes of registration
 1106 if the offender provides to the department a certified copy of
 1107 the court's written findings or order that indicates that the
 1108 offender is no longer required to comply with the requirements
 1109 for registration as a sexual offender.

1110 (14)

1111 (b) However, a sexual offender who is required to register
 1112 as a result of a conviction for:

1113 1. Section 787.01 or s. 787.02 where the victim is a minor
 1114 and the offender is not the victim's parent or guardian;

1115 2. Section 794.011, excluding s. 794.011(10);

1116 3. Section 800.04(4)(a) ~~800.04(4)(b)~~ where the court finds
 1117 the offense involved a victim under 12 years of age or sexual
 1118 activity by the use of force or coercion;

1119 4. Section 800.04(5)(b);

1120 5. Section 800.04(5)(c)1. where the court finds
 1121 molestation involving unclothed genitals or genital area;

1122 6. Section 800.04(5)c.2. where the court finds molestation
 1123 involving unclothed genitals or genital area;

1124 7. Section 800.04(5)(d) where the court finds the use of
 1125 force or coercion and unclothed genitals or genital area;

1126 8. Any attempt or conspiracy to commit such offense; or

1127 9. A violation of a similar law of another jurisdiction,
 1128

1129 must reregister each year during the month of the sexual
 1130 offender's birthday and every third month thereafter.

1131 Section 17. Paragraph (b) of subsection (13) of section
 1132 944.607, Florida Statutes, is amended to read:

1133 944.607 Notification to Department of Law Enforcement of
 1134 information on sexual offenders.—

1135 (13)

1136 (b) However, a sexual offender who is required to register
 1137 as a result of a conviction for:

1138 1. Section 787.01 or s. 787.02 where the victim is a minor
 1139 and the offender is not the victim's parent or guardian;

1140 2. Section 794.011, excluding s. 794.011(10);

1141 3. Section 800.04(4)(a) ~~800.04(4)(b)~~ where the victim is
 1142 under 12 years of age or where the court finds sexual activity
 1143 by the use of force or coercion;

1144 4. Section 800.04(5)(b);

1145 5. Section 800.04(5)(c)1. where the court finds
 1146 molestation involving unclothed genitals or genital area;

1147 6. Section 800.04(5)c.2. where the court finds molestation

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1148 involving unclothed genitals or genital area;
1149 7. Section 800.04(5)(d) where the court finds the use of
1150 force or coercion and unclothed genitals or genital area;
1151 8. Any attempt or conspiracy to commit such offense; or
1152 9. A violation of a similar law of another jurisdiction,
1153
1154 must reregister each year during the month of the sexual
1155 offender's birthday and every third month thereafter.
1156 Section 18. This act shall take effect October 1, 2014.

Florida Retirement System

Florida House of Representatives

State Affairs Committee

February 12, 2014

Florida Retirement System (FRS)

“At a Glance”

- Annual employer contributions **\$1.6 billion**
- Annual employee contributions **\$830 million**
- Active participants **621,774**
- Annuitants **334,682**
- Funding ratio as of July 1, 2013 **85.9 percent**
- Market value of assets as of July 1, 2013 **\$131.7 billion**

Florida Retirement System

- Established in 1970
- Provides retirement, disability, and death benefits
- Funded through employer and employee contributions and investment earnings
- Managed by the Department of Management Services and the State Board of Administration

Two Plan Options

- INVESTMENT PLAN (defined contribution plan)
 - Funded by employer and employee contributions
 - Participants determine how the funds in their accounts are invested (among various state-offered options)
 - Participants bear the risk of their investment decisions
 - 107,338 (17%) active members
- PENSION PLAN (defined benefit plan)
 - Retirement benefit is a formula-based payment that is funded by employer and employee contributions and investment earnings
 - Employer bears the investment risk
 - Fund managed by the State Board of Administration
 - 514,436 (83%) active members

Membership

Florida Retirement System

Participants

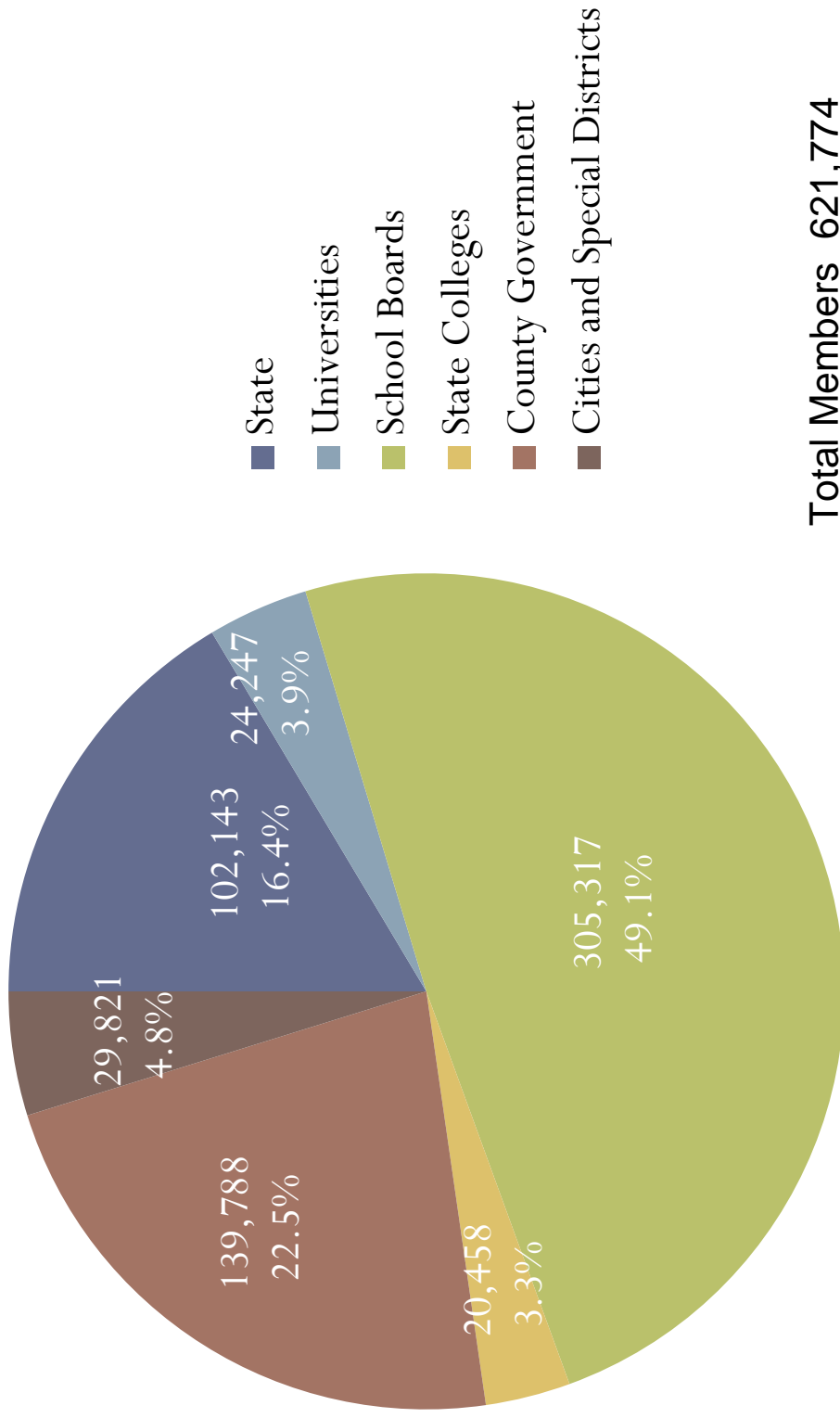
Required:

- State
- School boards
- County governments
- Universities
- State colleges

Optional:

- Municipalities
- Special districts

Active Membership by Employer



Class Structure and Benefits

FLORIDA RETIREMENT SYSTEM

Class Structure

- REGULAR CLASS – Members who do not qualify for membership in other classes within the FRS
- SPECIAL RISK CLASS – Law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, EMTs, certain professional health care workers within Department of Corrections and Department of Children and Families, and certain forensic employees
- SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS – Former special risk members who are transferred or reassigned to an administrative support position
- ELECTED OFFICERS’ CLASS – Members who hold specified elective offices
- SENIOR MANAGEMENT SERVICE CLASS – Senior management level positions assigned or authorized by law

Pension Plan Benefit Calculation

- Years of Service X Accrual Rate X Average Final Compensation
- Example: 30 (years of service) X 1.6% (accrual rate) X 40,000 (average final compensation) = \$19,200 (annual benefit)

Class	Years of Service		Accrual Rate
	Pre-July 1, 2011	Post July 1, 2011	
Regular	30	33	1.60%
Special Risk	25	30	3.00%
Special Risk Admin. Support	25	30	1.60%
Senior Management Service	30	33	2.00%
Elected Officers' - Judges	30	33	3.33%
Elected Officers' - Others	30	33	3.00%

Disability Benefits

- Disability retirement requires total and permanent disability from all employment
- Available to both Pension Plan and Investment Plan members
- In-line-of-duty disability benefits are available from first day of employment:
 - 65% of AFC – Special Risk
 - 42% of AFC – Other
- Non-duty disability retirement requires eight years of creditable service : 25% of AFC

Survivor Benefits

- In-line-of-duty survivor benefits for Pension Plan members provide one-half of salary at the time of death payable for the spouse's lifetime or until the youngest dependent child reaches age 18
 - Available from first day of employment
- Non-duty survivor benefits for Pension Plan members provide a lifetime benefit to a spouse or disabled dependent child, or until age 25 for a non-disabled child
 - Members must vest in order to be eligible

Deferred Retirement Option Program (DROP)

- Established in 1998
- Allows members to retire and continue working for up to:
 - 5 Years: Most members
 - 8 Years: K-12 Instructional Personnel
- Pension benefits accumulate in the FRS Trust Fund
 - Earn 6.5 percent interest and 3.0 percent Cost of Living Adjustment, if enrolled in DROP before July 1, 2011
 - Earn 1.3 percent interest, if enrolled in DROP on or after July 1, 2011
- Members must terminate FRS employment after completing DROP

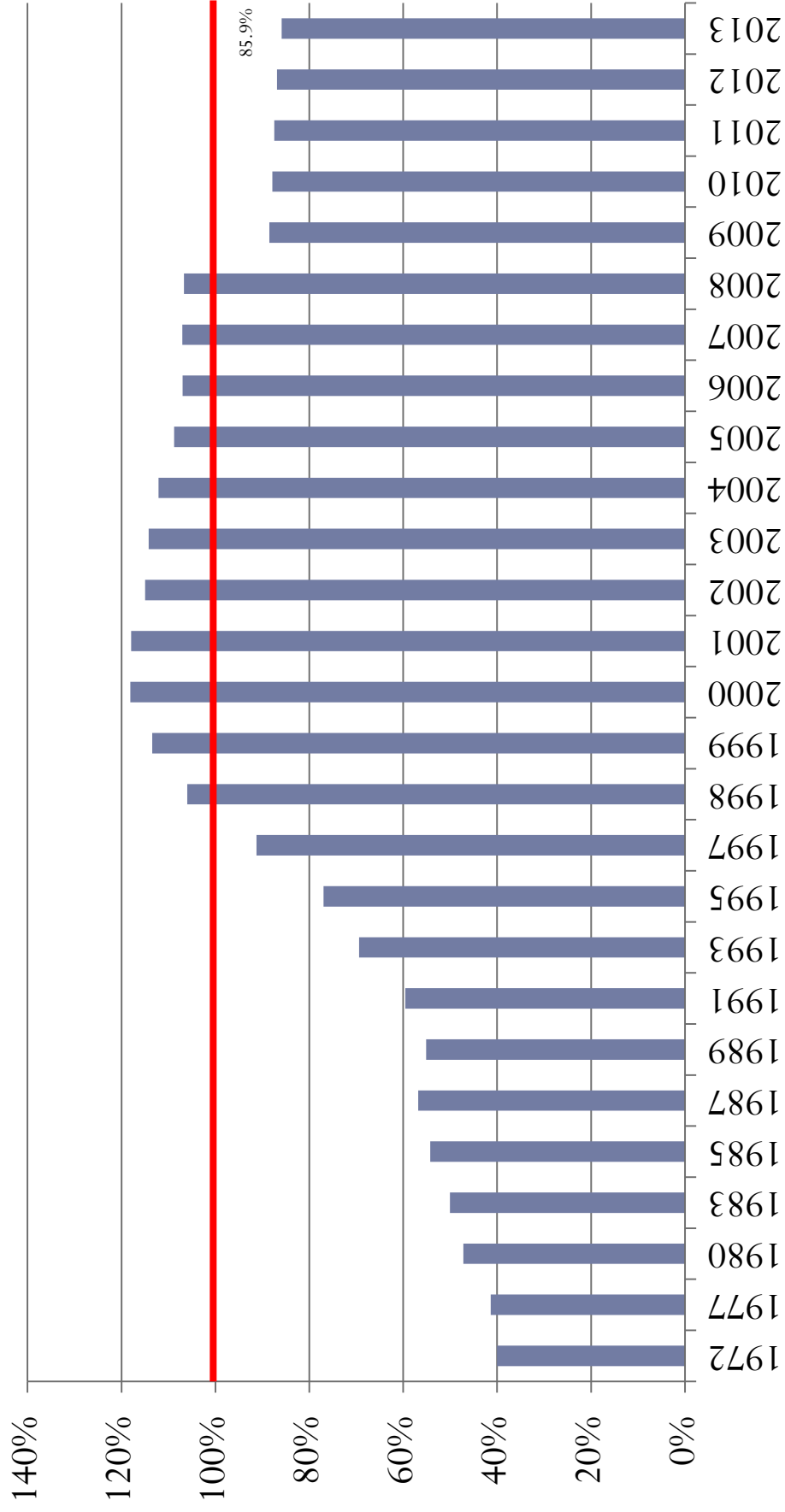
Pension Plan Funding

FLORIDA RETIREMENT SYSTEM

Contribution Rates and Funding Status

- Actuarial valuation is performed annually on the Pension Plan to determine funding status and employer contribution rates
- Employer contribution rates are set annually in law
 - Legislature generally adheres to the recommended rates and funds accordingly in the General Appropriations Act for education entities and state funded entities
- As of July 1, 2013, the Pension Plan had an actuarial funding level of **85.9** percent
 - Unfunded Actuarial Liability (UAL) of **\$21.6** billion
 - As required by law, the UAL must be amortized within 30 plan years
 - For FY 2013-14, \$500 million in recurring General Revenue Funds was appropriated towards payment of the UAL (State, Universities, State Colleges, and School Boards)

Historical Actuarial Funding Ratio



Employer and Employee Contribution Rates

FY 2013-14

Membership Class	<u>Normal</u> Employer Contribution 'Blended Rates'	<u>UAL</u> Employer Contribution 'Blended Rates'	<u>Total</u> Employer Contribution 'Blended Rates'	Employee Contribution Rates
Regular Class	3.53%	2.19%	5.72%	3.00%
Special Risk Class	11.00%	6.83%	17.83%	3.00%
Special Risk Admin. Support Class	4.17%	30.56%	34.73%	3.00%
Senior Management Service Class	4.81%	12.27%	17.08%	3.00%
Elected Officers' Class:				
Leg-Atty-Cabinet	6.52%	24.85%	31.37%	3.00%
Judges	10.05%	17.00%	27.05%	3.00%
County / City	8.44%	23.36%	31.80%	3.00%

The End



Retirement System Overview

February, 2014

Basic Plan Types

- Traditional pension plan (defined benefit or DB plan)
 - FRS Pension Plan is one of these
 - Fixed benefits for employees, with no investment risk exposure
 - Variable cost for employer, with all the investment risk exposure
 - Benefits more generous for long career employees (“back-loaded”)
- Defined contribution plan (DC plan)
 - FRS Investment Plan is one of these
 - Fixed contributions for employer, with no investment risk exposure
 - Variable benefits for employees, with all the investment risk exposure
 - Benefits are evenly earned throughout career (“generally more portable”)
- Risk-sharing plans
 - Combination DB + DC plan
 - Cash balance plan
 - Other more exotic flavors (e.g. target benefit, shared-risk DC, collective DC)

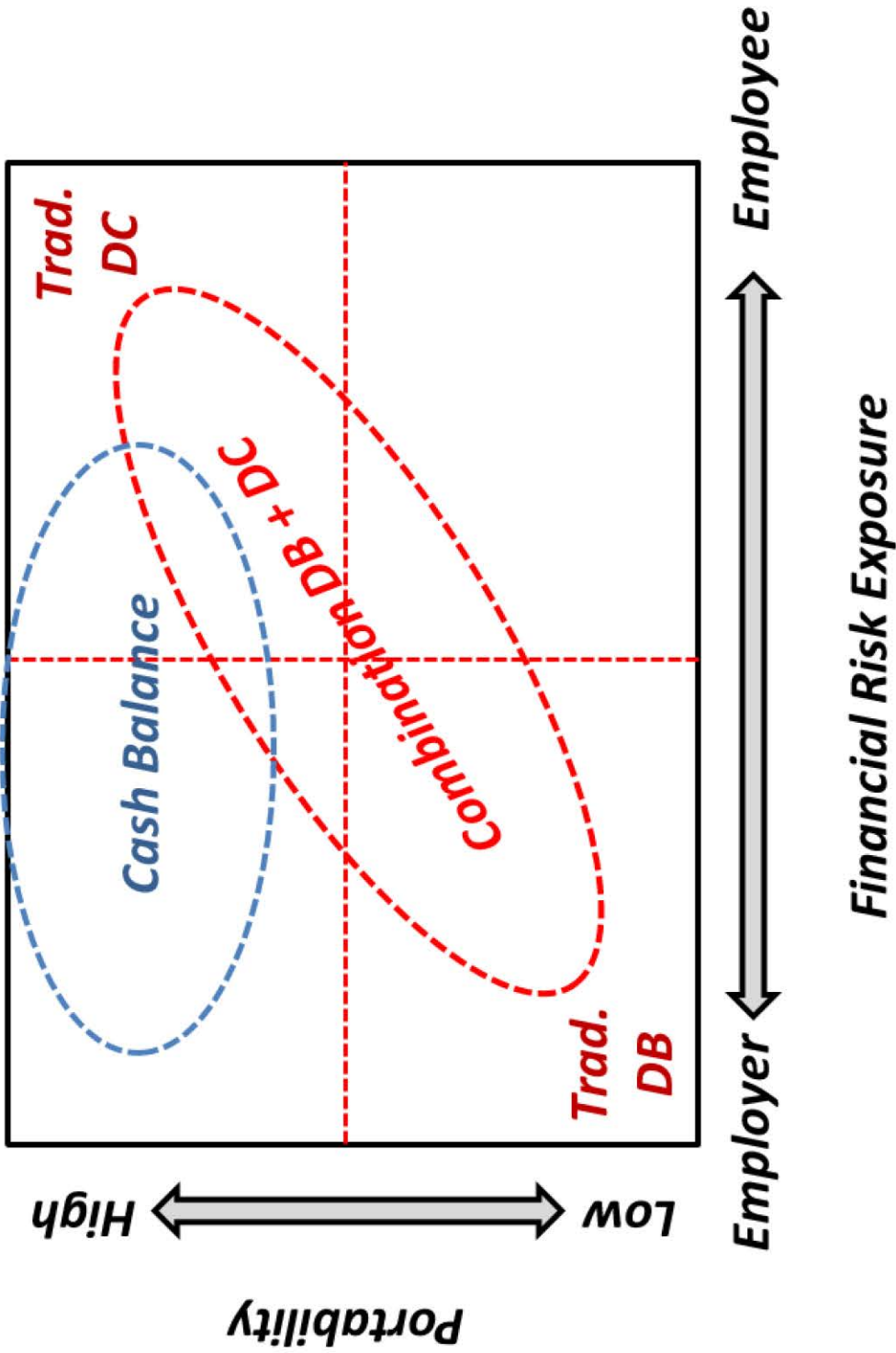
Risk-Sharing Plans: Combined DB + DC Plan

- Employees earn benefits in both a DB plan, and in a DC plan. For example:
 - Employee contributions flow into a DC plan.
 - Employer provides a DB plan with modest benefits.
- Total benefit is the sum from both plans.
- Simple to implement and understand.
- Has long history -- typical large company arrangement through mid 90's.
- Shared risk exposure between employee and employer.
- Currently used by 10 states.

Risk-Sharing Plans: Cash Balance Plan

- Looks like DC plan to employees, but...
- Accounts are “notional” accounts with no investment options (employer responsible for investing).
- Interest credits are defined, and partially guaranteed by employer (leaving employer with some risk and possible unfunded actuarial liability).
- Definition of the interest credit provision is the primary design issue:
 - Could be a fixed rate (e.g. 5% per year)
 - Could link to an outside rate (e.g. Treasury bill + 1%)
 - Could be based on fund returns (e.g. 4% plus 50% of returns over 4%)
- At retirement the account is usually paid as lump sum, but can also be annuity.
- Currently used by 5 states.

Mapping the Options



Investment Risk = Uncertain Results

- About 70% of benefit payments are funded from investment returns, and 30% from employee/employer contributions.
- With a mix of 70% equities and 30% bonds, the expected return over time might be 7.25% per year.
- But actual return experience is very uncertain over a 33 year period (i.e. length of employee career)
 - Could be as low as 3.5% (10th percentile)
 - Could be as high as 10.5% (90th percentile)
- This level of risk is difficult to handle for either employers (in DB plan) or employees (in DC plan).

Comparing the Options

- Assume the same level of expected cost for each type of plan:
 - Employee contributions at 3% of pay
 - Employer contributions at 3.5% of pay (for Regular Class employee)
- Key issues for comparison:
 - What are the expected benefit levels?
 - For a full career employee?
 - For a mid-career termination?
 - How much uncertainty is there in the benefit level (i.e. how much can they deviate from the expected amount)?
 - How much uncertainty is there in the employer cost?
 - If employer is providing either full or partial guarantees for some benefits, then unfunded liabilities will be generated if results are worse than assumed.
 - These unfunded liabilities will affect the required employer contribution rates on a prospective basis.

Current DB Plan (FRS Pension Plan)

- Full career employees have very good benefits. For a Regular Class employee retiring at age 65 with 33 years of service, the benefit will be 53% of average pay.
- Mid-career terminations have relatively small benefits. An employee terminating with 15 years of service might receive a benefit (deferred to age 65) that is about 25% of what they would get if they kept working for 33 years.
- There is no uncertainty in the employee benefits (fully guaranteed).
- There is significant uncertainty in the employer cost due to investment risk that can create unfunded liabilities (or surplus assets).
 - Historical total cost rates have been as low as 5.8% and as high as 18.2%. Adjusting for a 3% employee contribution, the range of employer cost would have been from 2.8% to 15.2% of payroll.
 - The theoretical employer cost to fund benefits for a full career employee might be:
 - Expected cost = 3.5% of payroll
 - Low cost, with very good investment performance = 0% of payroll
 - High cost, with very poor investment performance = 12% of payroll

Current DC Plan (FRS Investment Plan)

- Full career employees receive benefits equal to about 50% of those for the Pension Plan. The reasons for this are:
 - Investment returns are lower,
 - More of the employer dollars go towards mid-career terminations, and
 - The cost of buying a lifetime annuity is significantly higher.
- Mid-career terminations have much larger benefits than under the DB plan – in the range of 50% to 70% higher.
- There is significant uncertainty in the employee benefits.
 - Depending on investment performance, they could be 50% higher, or 30% lower.
 - At the low end, employee replacement rates might fall below minimum desired levels.
- There is no uncertainty in the employer cost.

Combination DB + DC Plan (3% Employee Contributions to DC Plan)

- Full career employees receive benefits equal to about 80-85% of those for the Pension Plan. This reflects a blending of the pure DB results and the pure DC results.
- Mid-career terminations have benefits that fall between the pure DB plan and the pure DC plan. They might be about 40% higher than for the DB plan.
- There is some uncertainty in the employee benefits, due to the DC portion of the benefit.
 - Depending on investment performance, they could be 15% higher, or 6% lower.
 - At the low end, employee replacement rates are much less likely to fall below minimum desired levels.
- There is uncertainty in the employer cost, due to the DB portion of the benefit.
 - Depending on investment performance, they could be as low as 1.5% of pay, or as high as 9% of pay.
 - This level of uncertainty is about a 35% reduction in the risk for a pure DB plan.

Cash Balance Plan

- Full career employees will receive benefits roughly equal to those under the pure DC plan. These will be about 50% lower than for a pure DB plan, and about 40% lower than those under a Combination DB+DC plan. As with the pure DC plan, this is because:
 - More of the employer dollars go towards mid-career terminations, and
 - The cost of buying a lifetime annuity is significantly higher.
- Comparable to the pure DC plan, mid-career terminations have much larger benefits than under the DB plan, and larger than under the combination DB+DC plan.
- There is uncertainty in the employee benefits.
 - **The results are very sensitive to how the interest credit provision is defined.**
 - At the low end, employee replacement rates might fall below desired levels, but the downside risk to employees is much less than in a pure DC plan.
- There is uncertainty in the employer cost.
 - **The results are very sensitive to how the interest credit provision is defined.**
 - If investment risk is shared, then the uncertainty should be less than for a pure DB plan.

Risk-Sharing Plans: Comparison Summary

- **Assume both risk-sharing options have the same expected employer cost as the current FRS retirement system**
- Benefits for full career employees: better under combination DB + DC
- Benefits for mid-career terminations: better under cash balance
- Uncertainty of employer cost / exposure to unfunded liabilities:
 - For combination DB + DC the risk might be reduced by about 35% relative to current Pension Plan
 - For cash balance plan, uncertainty depends critically on how the interest credit provision is designed
- Uncertainty of employee benefits:
 - For combination DB + DC the risk of severe shortfall is much lower than for the current Investment Plan
 - For cash balance plan, uncertainty depends critically on how the interest credit provision is designed – but the risk will be lower than for current Investment Plan
- Ease of implementation and administration: better for combination DB + DC
- Impact on investment policy:
 - For combination DB + DC there would be no significant impact.
 - For cash balance plan, a separate investment policy from the pension plan might be needed to address liquidity needs and the interest credit requirements.

