

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 526

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Sexual Offenses

DATE: February 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 526 significantly increases the punishment of sex offenders. Minimum sentences and maximum penalties are increased for several sexual battery and lewd offenses and incentive gain-time eligibility is eliminated. The bill also authorizes a court finding that an offense was sexually motivated, mandates community supervision of sex offenders who do not receive the maximum prison sentence, and ensures that offenders who are in the custody of the Department of Children and Families (DCF) as part of the civil commitment process and who are subject to conditional release supervision or community supervision will serve that supervision upon release from DCF custody.

Specifically, the bill:

- increases the minimum sentence length of adult-on-minor sex offenses sentenced under the Criminal Punishment Code by creating a new sentence point multiplier;
- increases the felony degree for certain sex offenses involving sexual battery, lewd battery, and lewd molestation when the offenses are committed by an adult upon a minor or involve a repeat sex offense which has the effect of creating longer sentences;
- prohibits incentive gain-time for offenders convicted of certain sexual offenses;
- allows prosecutors to request that a sentencing court make a written finding that an offense was sexually motivated;
- requires courts to order community supervision by means of a split sentence for certain sex offenders after their release from prison; and

- suspends, or tolls, the post-release supervision of offenders while in DCF custody as part of the civil commitment process thereby ensuring that the post-release supervision portion of the sentence is not eliminated.

## II. Present Situation:

### Sex Offenses

Florida law punishes sexual battery and lewd acts. The bill enhances the felony degree of a number of these sex offenses. This part of the analysis describes those sex offenses which are amended by the bill by enhancing the felony degree of the offenses.

It is a first degree felony<sup>1</sup> ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart<sup>2</sup> 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:

- 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.<sup>3</sup>

It is a second degree felony<sup>4</sup> ranked in Level 8<sup>5</sup> of the Criminal Punishment Code 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.<sup>6</sup>

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<sup>1</sup> A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S.

<sup>2</sup> Section 921.0022(3)(i), F.S. For a detailed discussion of level rankings, see the "Present Situation" section of this analysis.

<sup>3</sup> Section 794.011(4), F.S.

<sup>4</sup> A second degree felony is punishable by up to 15 years in state prison. Section 775.082, F.S.

<sup>5</sup> Section 921.0022(3)(h), F.S.

<sup>6</sup> Section 794.011(5), F.S.

It is a first degree felony ranked in Level 9 of the Criminal Punishment Code 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.<sup>7</sup>

It is a second degree felony ranked in Level 8 of the Criminal Punishment Code for a person to commit lewd or lascivious battery by:

- engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or
- encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.<sup>8</sup>

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.<sup>9</sup> It is a second degree felony ranked in Level 7<sup>10</sup> of the Criminal Punishment Code for an offender 18 years of age or older to commit lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age.<sup>11</sup>

### **Criminal Punishment Code/Sentence Point Multipliers**

The Criminal Punishment Code (Code)<sup>12</sup> is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>13</sup> Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense and, if applicable, additional offenses, prior offenses, prior capital felonies, victim injury, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.<sup>14</sup>

Points accrued for any of these factors are part of the subtotal sentence points. Additionally, those points may be multiplied if any of five "enhancements" apply (the primary offense must qualify for enhancement): a violation of the Law Enforcement Protection Act (LEPA); a relevant drug trafficking conviction; repeat motor vehicle theft; a criminal gang-related offense; or an offense involving domestic violence in the presence of a child. These "enhancements" are called point multipliers. With the exception of the drug trafficking multiplier, subtotal sentence points must be multiplied if the multiplier applies. For example, if points are assessed only for the

<sup>7</sup> Section 794.011(8)(b), F.S.

<sup>8</sup> Section 800.04(4), F.S.

<sup>9</sup> Section 800.04(5)(a), F.S.

<sup>10</sup> Section 921.0022(3)(g), F.S.

<sup>11</sup> Section 800.04(5)(c)2., F.S.

<sup>12</sup> Sections 921.002-921.0027, F.S.

<sup>13</sup> A noncapital felony is ranked in one of two ways. The felony may be assigned a ranking by its placement in a specific ranking level in the Code's offense severity ranking chart. See s. 921.0022, F.S. However, if the offense is not ranked in the chart, it is assigned a ranking based on its felony degree as provided in s. 921.0023, F.S.

<sup>14</sup> See s. 921.0024, F.S. Further discussion of Code sentencing is based on provisions of this statute, unless otherwise noted.

primary offense and an additional offense and the primary offense is manslaughter in violation of LEPA, the applicable LEPA multiplier is 2.0. This multiplier doubles the subtotal sentence points accrued for the primary offense plus the additional offense.

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 nonstate prison sanction (e.g., probation). Generally, the sentencing range is a nonprison sanction up to the maximum penalty for the felony degree of the primary offense.<sup>15</sup> For example, the maximum penalty for a third degree felony is 5 years in state prison. With one exception, the court may sentence the offender within the range of a nonprison sanction up to 5-years imprisonment. Sentences for multiple offenses may be imposed concurrently or consecutively.

The exception is when total sentence points are 22 points or less and the primary offense is a nonforcible felony that meets criteria in s. 775.082(10), F.S. In this case, there is no sentencing range. The court must impose a nonprison sanction, unless the court makes a written finding that such sentence would be a danger to the public.

If total sentence points are greater than 44 points, 28 points are subtracted from that number. This total is then multiplied by 0.75 to determine the lowest permissible sentence in prison months.<sup>16</sup> For example, if an offender's primary offense is a second degree felony and his or her total sentence points are 80 points, 28 points are subtracted from 80, which equals 52 points. The 52 points are then multiplied by 0.75, which equals 39, or 39 months in prison. In this example, absent mitigation,<sup>17</sup> the sentencing range is 39 months in state prison up to 15 years in state prison, the maximum penalty for a second degree felony.

Sentence point multipliers can enhance punishment in one of two ways. First, absent a multiplier, a defendant might not score sufficient points to score a lowest permissible sentence of imprisonment. With the multiplier, points may be sufficient to score a lowest permissible sentence of imprisonment. Second, for those offenders who do score a sentence of imprisonment as the lowest permissible sentence (even without a multiplier), the multiplication of points provides for a significantly longer minimum sentence of imprisonment than if points were not multiplied.

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<sup>15</sup> 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.

<sup>16</sup> 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) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.

<sup>17</sup> The Code includes a list of 'mitigating' factors. See s. 921.0026, F.S. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence (a "downward departure"). A mandatory minimum term is not subject to these mitigating factors. See *State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

### **Incentive Gain Time**

The DOC may grant incentive gain-time to certain inmates as a means of encouraging satisfactory behavior. Inmates whose offenses were committed on or after October 1, 1995, may be eligible to receive up to 10 days of incentive gain-time each month. The total amount of incentive gain-time awarded to these inmates cannot result in release before serving at least 85 percent of the sentence imposed by the court.<sup>18</sup> Inmates with offense dates before October 1, 1995, may be eligible for higher monthly incentive gain-time awards and are not subject to the 85 percent restriction. Inmates sentenced to life imprisonment are not entitled to gain time unless granted a pardon or clemency.<sup>19</sup>

### **Sexually Violent Predators**

A sexually violent predator is a person who has been convicted of a sexually violent offense and who also suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.<sup>20</sup> The Involuntary Civil Commitment of Sexually Violent Predators Act (Act) was passed in 1998 to address the treatment needs of these offenders.<sup>21</sup> The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons. The process is administered by the Sexually Violent Predator Program (SVPP), a unit of the Department of Children and Families (DCF).

Sexually violent predators who are committed to the state under the Act are detained and receive treatment at the Florida Civil Commitment Center (FCCC) in Arcadia until the court determines that they no longer meet the criteria to be considered a sexually violent predator. As of January 27, 2014, the FCCC housed 574 civilly committed predators and 85 detainees awaiting completion of commitment procedures. In the commitment proceeding the prosecution has prevailed in 52 percent of the cases and the defendants have succeeded 48 percent of the time.<sup>22</sup>

### **Tolling Of Supervision While Housed at the Florida Civil Commitment Center (FCCC)**

If a person who is civilly committed to the FCCC or detained there while awaiting completion of civil commitment proceedings has been sentenced to a split sentence, the community supervision portion of the split sentence begins to run when the person is released from prison and continues to run while in the FCCC. In many cases, the Department of Corrections' community supervision sentence expires before the individual is released from the FCCC.

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<sup>18</sup> Section 944.275(4)(b)3., F.S.

<sup>19</sup> *Id.* Life imprisonment sentences are given to capitol felonies which include sexual battery or attempted sexual battery when the victim is less than 12 and the offender is 18 or older (s. 794.011(2)(a), F.S.) and lewd molestation when the victim is under 12 and the offender is an adult (ss. 800.04(5)(b) and 775.082(3)(a)4.a., F.S.).

<sup>20</sup> Section 394.912, F.S.

<sup>21</sup> Sections 394.910-394.932, F.S.

<sup>22</sup> Telephone interview with Kristin Kanner, Director, Sexually Violent Predator Program, Florida Department of Children and Families (January 27, 2014).

As of January 24, 2014, 181 offenders are serving community supervision in the FCCC.<sup>23</sup> During the past fiscal year, six offenders had their sentences expire while in the FCCC and 20 offenders were released with a remaining period of community supervision.<sup>24</sup>

### **Sex Offenders Under Community Supervision by the Department of Corrections**

An offender may be placed on community supervision after conviction of a felony, either immediately upon sentencing or after serving a prison sentence. Supervised offenders must comply with statutory terms and conditions as well as special terms and conditions imposed by the sentencing court or, for certain types of post-release supervision, by the Parole Commission. Offenders on community supervision report to and are monitored by probation officers employed by the DOC. Of those sex offenders released from prison in FY 2012-13, 66.1 percent had supervision upon release.

The vast majority of sex offenders (94 percent) under supervision were placed there by the judge at the original sentencing. Either the offender was sentenced directly to supervision and had no prison sentence at all or the offender was serving a split sentence, which is prison followed by probation. A small portion of the sex offenders (6 percent) under supervision were placed there because of a statutory requirement (conditional release).

As of November 30, 2013, 7,829 offenders who are required to register as a sexual offender or a sexual predator were on community supervision, which is 5.4 percent of the total community supervision population of 145,464 offenders.

As of November 30, 2013, there were 6,390 offenders convicted of sex offenses under community supervision (4.4 percent of the total supervised population of 145,464). Of those, 2,238 or 35 percent were tracked with electronic monitoring, which is a mandatory condition of supervision for certain sex offenses. The vast majority of the 6,390 were under supervision via a judge's original sentence (5,997 or 94 percent). This means the judge directly sentenced the offender to supervision (e.g., sex offender probation) without prison or the offender is serving a split sentence, meaning he or she served a prison sentence followed by a required supervision term. The remaining 393 offenders (6 percent) are serving a post-prison supervision term. In most cases, these are conditional release offenders who have served 85 percent of their prison sentences and are serving the remaining 15 percent under community supervision.<sup>25</sup>

Offenders on community supervision for certain sex offenses committed against a child have conditions restricting them from:

- living near schools and other places where children regularly congregate;
- working or volunteering at any place where children regularly congregate, or
- having unsupervised contact with a minor.<sup>26</sup>

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<sup>23</sup> E-Mail from David Ensley, Bureau Chief, Bureau of Research & Data Analysis, Florida Department of Corrections (January 29, 2014) (on file with the Senate Committee on Judiciary).

<sup>24</sup> E-mail from Will Kendrick, Legislative Director for the Department of Corrections (January 7, 2014) (on file with the Senate Committee on Judiciary).

<sup>25</sup> Email from David Ensley, *supra* note 23.

<sup>26</sup> See s. 947.1405, F.S.

In recent years, mandatory conditions of supervision for sex offenders were expanded to prohibit certain activities such as distributing candy at Halloween and visiting schools without the prior approval of the probation officer.

Residency restrictions and employment restrictions apply to offenders who committed certain sex offenses even if they have completed their sentences and are not on community supervision. Local ordinances may impose additional residence restrictions, including wider exclusion zones and additional areas of exclusion.

Offenders on community supervision for a sex offense are more likely to have supervision revoked for a technical violation than are other offenders on community supervision. During FY 2012-2013, 416 sex offenders had supervision revoked for misconduct, with 67 percent of those resulting from a technical violation and 33 percent as a result of a new crime. By contrast, 32,815 other offenders had community supervision revoked for misconduct during the same time period, with 59 percent of the revocations resulting from a technical violation and 41 percent as a result of a new crime.<sup>27</sup>

### **III. Effect of Proposed Changes:**

The bill makes significant changes to the punishment of sex offenders. Minimum sentences and maximum penalties are enhanced for several sexual battery and lewd offenses and incentive gain-time eligibility is eliminated. The bill also authorizes a court finding that an offense was sexually motivated, mandates community supervision of sex offenders who do not receive the maximum prison sentence, and ensures that offenders who are in the custody of the Department of Children and Families (DCF) as part of the civil commitment process and who are subject to conditional release supervision or community supervision will serve that supervision upon release from DCF custody.

The bill provides for severability of any provision of the bill if its application held to be invalid. The bill takes effect October 1, 2014.

#### **Enhances the Felony Degree of Certain Sex Offenses (Sections 1-3)**

The bill enhances punishment for a variety of sex offenses. Specifically, the bill increases the felony degree (thereby providing for longer sentences) of several sexual battery, lewd battery, and lewd molestation offenses.

Section 794.011, F.S., which addresses sexual battery, is amended to increase from a first degree felony, punishable by up to 30 years imprisonment, to a first degree felony, punishable by up to life imprisonment, the following offenses:<sup>28</sup>

- sexual battery of a minor by a person who has custodial authority over the minor;

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<sup>27</sup> Email from David Ensley, *supra* note 23.

<sup>28</sup> As previously indicated in this analysis, generally, a first degree felony is punishable by up to 30 years in state prison under s. 775.082, F.S. However, this section also provides that a first degree felony may be punished by a “term of years not exceeding life” imprisonment when specifically provided by statute.

- sexual battery by an adult on a person at least 12 years but younger than 18 years of age when the sexual battery involves a specified circumstance (such as the victim being physically helpless to resist); and
- sexual battery on a person 12 years of age or older when the sexual battery involves a specified circumstance and the offender has previously been convicted of a specified sexual battery or lewd felony.<sup>29</sup>

The bill further amends s. 794.011, F.S., to increase from a second degree felony (up to 15 years imprisonment) to a first degree felony (up to 30 years imprisonment) the following offenses:

- sexual battery by an adult on a person at least 12 years but younger than 18 years of age 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 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.<sup>30</sup>

The bill amends s. 800.04, F.S., which addresses lewd acts, to increase from a second degree felony, punishable by up to 15 years imprisonment, to a first degree felony, punishable by up to 30 years imprisonment, the following offenses:

- lewd battery by an adult on a child 12 years of age or older but less than 16 when the offender has previously been convicted of a sexual battery or lewd felony; and
- lewd molestation by an adult on a victim 12 years of age or older but less than 16 years when the offender has previously been convicted of a specified sexual battery or lewd felony.<sup>31</sup>

The bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code (Code), to modify statutory references and descriptive language. While the bill increases the felony degree of certain sexual misconduct, it does not increase the ranking level currently assigned to this conduct. The “enhancements” impact the maximum penalty, not the minimum sentence, which is impacted by a different provision of the bill that provides for a sentence point multiplier.

#### **Creates a Sentence Point Multiplier for Certain Adult-on-Minor Sex Offenses (Section 4)**

The bill creates a sentence point multiplier for an adult-on-minor sex offense. This multiplier will double sentence points, resulting in some sex offenders receiving a minimum prison sentence and other sex offenders receiving a significantly longer minimum prison sentence.

Specifically, the bill amends s. 921.0024, F.S., the Criminal Punishment Code worksheet, to provide that subtotal sentence points are multiplied by 2.0 if the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the

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<sup>29</sup> The sex offenses involve kidnapping and false imprisonment (ss. 787.01(2) and 787.02(3), F.S.); sexual battery offenses (chapter 794, F.S., excluding s. 794.011(10), F.S.); lewd acts against a child (ss. 800.04 and s. 847.0135(5), F.S.); and lewd acts against an elderly person or disabled person (s. 825.1025, F.S.).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is:

- 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.);
- unlawful sexual activity committed on a minor 16 or 17 years of age (s. 794.05, F.S.); or
- lewd acts against a child (s. 800.04 or s. 847.0135(5), F.S.).

If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under ch. 775, F.S., the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

The point multiplier can impact sentencing of some sex offenders by increasing points to a threshold in which the offenders would score a lowest permissible sentence of imprisonment. For example, a first-time offender whose subtotal sentence points are based only on points scored for the primary offense of computer-transmitted lewd exhibition,<sup>32</sup> a Level 5 offense,<sup>33</sup> scores a nonprison sanction as the lowest permissible sentence. Under the bill, this offense qualifies for the 2.0 point multiplier, and as a result of the doubling of points, the offender's lowest permissible sentence is 21 months in prison.

The point multiplier also impacts the sentencing of some sex offenders who score a lowest permissible sentence of imprisonment without the multiplier. The doubling of points substantially increases minimum sentence length for the primary offense. For example, under current law, an offender who receives 172 subtotal sentence points as a result of points accrued for a primary offense of second degree felony sexual battery<sup>34</sup> and points accrued for other factors scores a lowest permissible sentence of 108 months in prison or approximately 9 years. Under the bill, this offense qualifies for the 2.0 point multiplier, and as a result of the doubling of points, the sentence length increases from 108 months in prison to 237 months in prison. However, because this number of months exceeds the maximum penalty of 15 years provided in s. 775.082, F.S., for the second degree felony primary offense, the adjusted prison sentence length is 15 years in prison. Therefore, the length of offender's sentence for the sexual battery offense increases from 9 years in prison to 15 years in prison.

### **Prohibits Certain Sex Offenders from Receiving Incentive Gain-time (Section 6)**

The bill prohibits the award of incentive gain-time to reduce the sentence for certain sexually violent offenses committed on or after October 1, 2014. As a result, an offender must serve all of the imposed sentence.<sup>35</sup> The offenses for which gain-time is prohibited are:

<sup>32</sup> Section 847.0135(5)(b), F.S.

<sup>33</sup> Section 921.0022(3)(e), F.S.

<sup>34</sup> Section 794.011(5), F.S.

<sup>35</sup> An exception is that an offender who is prohibited from receiving gain-time could still be awarded from 1 day to 60 days of meritorious gain time for performing an outstanding deed (such as saving a life or assisting in the capture of an escaped inmate) or an outstanding service. Meritorious gain-time can be awarded pursuant to s. 944.275(4)(c), F.S.

- all specifically-designated sexually violent offenses (listed in s. 394.912(9)(a)-(e), F.S.), except falsely accusing a government official of abusing authority to commit sexual battery;<sup>36</sup>
- unlawful sexual activity committed on a minor 16 or 17 years of age;<sup>37</sup> and
- lewd acts against an elderly person or disabled person (s. 825.1025, F.S.).

#### **Authorizes Court Finding that an Offense was Sexually Motivated (Section 5)**

A person may be found to be a sexually violent predator based upon conviction of an offense that is not specifically designated as a sexually violent offense. Section 394.912(9)(h), F.S., provides that any offense that is found to be sexually motivated beyond a reasonable doubt is a sexually violent offense. A finding of sexual motivation can be made either at the time of sentencing or during the civil commitment proceedings. The bill provides more specific direction that the state attorney may move the court to make a written finding on the record that an offense is sexually motivated. In making such a finding, the judge must consider the circumstances of the case and a victim impact statement.

#### **Tolls Community Supervision During Time Offender is in DCF Custody (Sections 7 and 8)**

The bill amends s. 947.1405, F.S., concerning conditional release, and s. 948.012, F.S., concerning probation and community control, to provide that the running of community supervision is tolled during the time that a person is in DCF custody pursuant to the Sexually Violent Predators Act. The tolling will apply to all community supervision that begins on or after October 1, 2014, regardless of when the underlying offense was committed.

Tolling of community supervision will preserve the period of supervision until after the person is released from detention or commitment in the FCCC. This will allow community supervision to serve its intended purposes, including monitoring the person in the community rather than in a secure and controlled environment.

#### **Mandates Community Supervision of Certain Sex Offenders who do not Receive Maximum Prison Sentence (Section 8)**

The bill amends s. 948.012, F.S., relating to split sentences of probation or community control, to require that courts impose a split sentence with mandatory community supervision for certain sex offenders who do not receive the maximum prison sentence.

Section 948.012(1), F.S., currently provides that when the court prescribes imprisonment, the court *may*, at time of sentencing, impose a split sentence whereby the defendant is placed on probation or community control upon completion of any specified period of imprisonment.

Under the bill and effective for offenses committed on or after October 1, 2014, if the court imposes a term of years in accordance with s. 775.082, F.S., which is less than the maximum

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<sup>36</sup> Section 794.011(10), F.S. The bill does not specify whether the prohibition against awarding gain-time for these offenses applies to attempt, solicitation, or conspiracy to commit the offense.

<sup>37</sup> Section 794.05, F.S.

sentence for the offense, the court *must* impose a split sentence pursuant to s. 948.012(1), F.S., for any person who is convicted of:

- 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.);
- 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.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of criminal legislation. On January 30, 2014, CJIC met and provided fiscal information for this bill. However, actual appropriations associated with passage of the bill will depend on a number of factors, including the existing inventory of prison beds.

**Felony Degree Enhancements**

The bill increases the felony degree (providing for longer sentences) for certain sex offenses involving sexual battery, lewd battery, and lewd molestation when the sexual or lewd acts were committed by an adult upon a minor or involved a repeat sex offense. The Criminal Justice Impact Conference states that the impact of these changes is insignificant. Because the bill changes only the felony degree of these offenses (not the Code ranking), there is no way to model changes.

**Sentence Point Multiplier**

The bill increases minimum sentence length for adult-on-minor sex offenses sentenced under the Criminal Punishment Code by creating a new sentence point multiplier. The Criminal Justice Impact Conference estimates a cumulative \$18.5 million fixed capital outlay cost (200 beds) and a cumulative \$6.3 million operational cost after 5 years. Total costs (FY 2014-15 to FY 2018-19): \$24.9 million.<sup>38</sup>

Fiscal Impact of Sex Offense Adult-on-Minor Multiplier October 1, 2014 Effective Date						
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	2	2	\$17,897	\$1,524,775	\$1,542,672	\$1,542,672
2015-2016	25	23	\$246,200	\$2,964,008	\$3,210,208	\$4,752,880
2016-2017	72	47	\$901,276	\$3,977,688	\$4,878,964	\$9,631,843
2017-2018	133	61	\$1,942,888	\$4,495,633	\$6,438,521	\$16,070,364
2018-2019	200	67	\$3,219,111	\$5,623,232	\$8,842,343	\$24,912,707
<b>TOTAL</b>	<b>200</b>	<b>200</b>	<b>\$6,327,371</b>	<b>\$18,585,336</b>	<b>\$24,912,707</b>	<b>\$24,912,707</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 30, 2014.

**Incentive Gain-Time Prohibition**

The bill prohibits incentive gain-time for offenders convicted of certain sexual offenses. The Criminal Justice Impact Conference estimates a cumulative \$11.8 million fixed capital outlay cost (117 beds) and a cumulative \$2.93 million operational cost after 5 years. Total costs (FY 2014-15 to FY 2020-21): \$14.7 million.<sup>39</sup>

<sup>38</sup> The Criminal Justice Impact Conference anticipates that the number of prison beds will continue to increase after Year 5.

<sup>39</sup> The Criminal Justice Impact Conference projects that the number of prison beds will continue to rise after Year 5.

Fiscal Impact of Eliminating Incentive Gain Time for Certain Sex Offenders						
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	\$2,086,656	\$2,411,859	\$4,226,969
2017-2018	60	32	\$834,020	\$3,824,643	\$4,658,663	\$8,885,632
2018-2019	117	57	\$1,711,059	\$4,183,136	\$5,894,195	\$14,779,827
<b>TOTAL</b>	<b>117</b>	<b>117</b>	<b>\$2,934,111</b>	<b>\$11,845,716</b>	<b>\$14,779,827</b>	<b>\$14,779,827</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 30, 2014.

### Combined Sentence Point Multiplier and Incentive Gain-Time Prohibition

The Criminal Justice Impact Conference estimates a cumulative \$28.9 million fixed capital outlay cost (298 beds), a cumulative \$8.5 million in operating costs after 5 years for the incentive gain-time prohibition and the sentence point multiplier. Total costs (FY 2014-15 to FY 2020-21): \$37.5 million.<sup>40</sup>

Fiscal Impact of Eliminating Incentive Gain Time for Specified Sex Offenders AND Sex Offense Adult-on-Minor Multiplier October 1, 2014 Effective Date						
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	2	2	\$17,897	\$1,646,757	\$1,664,654	1,664,654
2015-2016	27	25	\$264,437	\$3,783,840	\$4,048,277	\$5,712,931
2016-2017	87	60	\$1,059,231	\$6,129,552	\$7,188,783	\$12,901,714
2017-2018	181	94	\$2,539,970	\$7,850,583	\$10,390,553	\$23,292,267
2018-2019	298	117	\$4,630,493	\$9,532,064	\$14,162,557	\$37,454,824
<b>TOTAL</b>	<b>298</b>	<b>298</b>	<b>\$8,512,028</b>	<b>\$28,942,796</b>	<b>\$37,454,824</b>	<b>\$37,454,824</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 30, 2014.

### Tolling Post-Release Supervision

The bill suspends (or tolls) post-release supervision of offenders while in DCF custody as part of the civil commitment process.

The DOC states that this provision will involve a very limited percentage of the supervised population, thus the impact is negligible. Beyond that, the overall count under supervision is unaffected by the tolling provision. What does change is when the supervision occurs in relation to the prison release date. The same total number of

<sup>40</sup> The Criminal Justice Impact Conference anticipates that the projected number of prison beds will continue to rise after Year 5.

offenders will be supervised, either in the DCF facility or in the open community after release from the DCF facility.<sup>41</sup>

### **Mandatory Community Supervision (Split Sentence)**

The bill requires that courts impose a split sentence with mandatory community supervision for certain sex offenders who do not receive the maximum prison sentence. 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.

The Criminal Justice Impact Conference states that the mandatory minimum 2 years of post-prison supervision will have no impact on prison beds. 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, because the bill applies only to future offenses, the DOC expects that the mandatory split provision will not be a significant increase in supervision population during the first years of implementation. The DOC notes that the average time between offense and prison release will increase only because of the other provisions of the bill which encourage longer sentences and prohibit gain time for these inmates.<sup>42</sup>

### **VI. Technical Deficiencies:**

The Legislature may wish to amend the bill to clarify which previous violations of certain laws qualify sex offenders for heightened criminal sanctions. These clarifying changes may be needed in portions of the bill amending ss. 794.011(4)(d) and (5)(d), and 800.04(4)(c) and (5)(e), F.S.

### **VII. Related Issues:**

None.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 794.011, 800.04, 921.0022, 921.0024, 921.30, 944.275, 947.1405, and 948.012.

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<sup>41</sup> E-mail from Will Kendrick, Legislative Director for the Department of Corrections (January 8, 2014) (on file with the Senate Committee on Judiciary).

<sup>42</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 13, 2014:**

Corrects statutory references in provisions of the bill that enhance the felony degree of certain sex offenses and creates an adult-on-minor sentence point multiplier.

- B. **Amendments:**

None.