

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1243                      Victims of Sexual Battery  
**SPONSOR(S):** Cantens  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 1118

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety &amp; Crime Prevention</u>	_____	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Appropriations</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

The bill creates section 921.244, F.S., which requires a judge who is sentencing an offender for a sexual battery or lewd or lascivious offense, to order that the offender be prohibited from having any contact with the victim for the duration of the sentence imposed. The bill provides that the judge may reconsider the no contact order upon the request of a victim who is at least 18 years old, if the judge holds an evidentiary hearing to determine whether a change of circumstances has occurred and whether it is in the best interest of the victim that the court order be modified or rescinded. The bill provides that any offender who violates a court order issued pursuant to the newly created section commits a third degree felony.

The bill amends section 748.048, F.S., to provide that an offender commits the offense of aggravated stalking, a third degree felony, when the offender stalks the victim after having been prohibited from contacting the victim pursuant to the section of statute created by the bill.

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. Traditionally, the conference has determined that a third degree felony that is not ranked in the offense severity ranking chart of the Criminal Punishment Code, and therefore would result in a lowest permissible sentence of any non-state prison sanction, will have an insignificant prison bed impact.

The bill will take effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

### B. EFFECT OF PROPOSED CHANGES:

#### Current law

*Conditions of probation:* Section 948.03, F.S. includes a number of standard conditions of probation or community control for an offender who commits a sexual battery<sup>1</sup> or lewd or lascivious offense<sup>2</sup> including a prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.

*State prison:* Inmates in state prison are prohibited from sending mail to or telephoning a person has advised the warden that he or she does not wish to receive mail from the inmate. After an inmate is notified of the restriction and attempts to correspond which the person who has made the request, the inmate will be subject to disciplinary action.<sup>3</sup>

*Petition for protection against sexual violence:* Section 784.046, F.S. provides that a victim of sexual battery or lewd or lascivious offense can seek an injunction for protection against sexual violence under certain circumstances.

---

<sup>1</sup> Section 794.011 creates the offense of sexual battery. The term "sexual battery" is defined as "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". s. 794.011(1)(h), F.S. The severity of the offense depends on the age of the victim, the age of the offender and the circumstances of the offense

<sup>2</sup> Section 800.04, F.S. creates several lewd or lascivious offenses as follows:

- Lewd or lascivious battery is a second degree felony. The defense is committed when a person: 1) engages in "sexual activity" which is defined 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" with a person 12 years of age or older but less than 16 or 2) encourages, forces, or entices any person less than sixteen to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.
- Lewd or lascivious molestation is committed when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16 years of age or forces or entices a person under 16 years of age to so touch the perpetrator.
- Lewd or lascivious conduct is committed 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
- Lewd or lascivious exhibition is committed when a person in the presence of a victim who is less than 16 years of age, intentionally masturbates, intentionally exposes the genitals in a lewd or lascivious manner or intentionally commits any other sexual activity 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.

<sup>3</sup> See 33-210.101, F.A.C.(restricting mail); 33-602.205(12)(a), F.A.C. (restricting inmate telephone use) Inmates are further prohibited from making harassing, unwelcome, threatening, obscene or nuisance phone calls. 33-602.205(12)(b)1&2.

*Stalking:* Section 784.048, F.S., provides that any person who willfully, maliciously and repeatedly follows, harasses or cyberstalks<sup>4</sup> another person, commits the offense of stalking, a first degree misdemeanor. The term “harass” is defined to mean engaging in a course of conduct<sup>5</sup> directed at a specific person that causes substantial emotional distress<sup>6</sup> and serves no legitimate purpose.<sup>7</sup>

Aggravated stalking is a third degree felony and occurs when any person stalks another person and:

- the offender makes a credible threat<sup>8</sup> with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person’s child, sibling, spouse, parent, or dependent or ;
- the victim was under 16 years of age; or
- the offender was subject to an injunction against repeat violence, domestic violence, dating violence, or another court imposed prohibition of conduct toward the victim or the victim’s property

Provisions of HB 1243:

*Order of no Contact:* The bill creates section 921.244, F.S., which provides that at the time of sentencing an offender for a sexual battery or lewd or lascivious offense<sup>9</sup>, the court must order that the offender be prohibited from having any contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence imposed. The bill provides that the court may reconsider the no contact order upon the request of the victim, if such request is made at any time after the victim has attained 18 years of age. The court is required to hold an evidentiary hearing to determine whether a change of circumstances has occurred that warrants a change in the court order and whether it is in the best interest of the victim that the court order be modified or rescinded. The evidentiary hearing must include psychiatric testimony to determine whether the victim has overcome any psychological control or other control exercised over the victim by the offender.

The bill provides that an offender who violates a court order issued pursuant to the newly created section, commits a third degree felony.

*Stalking:* The bill amends the stalking statute to provide that any person who, after having been sentenced for sexual battery or a lewd or lascivious offense and ordered to have no contact with the victim, willfully, maliciously and repeatedly follows, harasses, or cyberstalks such victim, commits aggravated stalking, a third degree felony.

---

<sup>4</sup> The term “cyberstalk” is defined to mean “to engage in a course of conduct to communicate, or cause to be communicated, words, images or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. s. 784.048, F.S.

<sup>5</sup> The term “course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’ Such constitutionally protected activity includes picketing or other organized protests.”s. 784.048(1)(b), F.S.

<sup>6</sup> In determining whether an incident or series of incidents creates substantial emotional distress for a victim, courts have used an objective standard – whether a reasonable person would be put in substantial emotional distress when subjected to such conduct. See Bouters v. State, 659 So.2d 235, 238 (Fla. 1995).

<sup>7</sup> See s. 784.048(1)(b), F.S. (defining “harass” for purposes of the stalking statute).

<sup>8</sup> The term “credible threat” means “a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.” s. 784.048(1)(c), F.S.

<sup>9</sup> Sections 794.011, F.S.(sexual battery) and 800.04, F.S. (lewd of lascivious offenses)

C. SECTION DIRECTORY:

Section 1. Creates s. 921.244, F.S.; relating to orders of no contact.

Section 2. Amends s. 784.048, F.S.; amending stalking statute.

Section 3. Provides effective date.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. Traditionally, the conference has determined that a third degree felony that is not ranked in the offense severity ranking chart of the Criminal Punishment Code, and therefore would result in a lowest permissible sentence of any non-state prison sanction, will have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not rank the newly created aggravated stalking offense in the offense severity ranking chart of the Criminal Punishment Code and it will therefore default to a level 1 offense. Currently, the offense of aggravated stalking that is committed by an offender who stalks another person after imposition of any court imposed condition of conduct toward the victim, is ranked in level 7. The lowest permissible sentence for this offense is 21 months in prison. As a result, the newly created aggravated stalking offense may result in a shorter term of incarceration for an offender who is prosecuted under this provision than for an offender who is prosecuted under the current aggravated stalking provision.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**