

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1277 Sexual Offenders and Predators

SPONSOR(S): Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; Glorioso

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1890, SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Cunningham	Cunningham
2) Appropriations Committee	21 Y, 0 N, As CS	McAuliffe	Leznoff
3) Judiciary Committee	17 Y, 0 N, As CS	Cunningham	Havlicak

SUMMARY ANALYSIS

CS/CS/CS/HB 1277 amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the offense of incest, where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender. This will have the effect of expanding the number of persons who qualify as sexual offenders.

The bill also:

- Creates s. 847.0141, F.S., which makes it unlawful for a minor to: 1) Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors; 2) Intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.
- Requires sexual predators and offenders to provide the sheriff and FDLE any Internet identifier the offender uses and defines the term "Internet identifier."
- Requires sexual offenders and predators to provide passport information, immigration document information, and other specified information to the sheriff as part of the registration process.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry. Allows persons convicted of certain offenses before July 1, 2007, to be considered for removal of their sexual offender registration requirements. This will increase the number of persons eligible to have the requirement to register as a sexual predator or offender removed.
- Specifies that s. 948.31, F.S., requiring courts to require sex offender treatment as a condition of supervision in certain instances, is a standard condition of supervision and does not require oral pronouncement at the time of sentencing.

The Criminal Justice Impact Conference met on April 4, 2011 and determined the above provisions will have an insignificant impact on state prison beds. FDLE reports that the bill will require them to spend \$50,450 in nonrecurring funds to hire contract programming staff, which they can absorb with existing resources.

The bill also creates the Florida Safe Harbor Act and makes several amendments to protect and provide shelter for sexually exploited children. Specifically, the bill:

- Changes several definitions relating to sexual exploitation;
- Requires delivery of children alleged to be dependent and sexually exploited to short-term safe houses, if one is available;
- Provides rebuttable presumptions of law that placement in safe houses is necessary for sexually exploited children;
- Amends the civil penalty for specified violations of prostitution from \$500 to \$5,000 and applies it to violators who solicit, induce, entice or procure another to commit prostitution, lewdness, or assignation.
- Revises the civil penalty so that it also applies to violators, 16 or older in age, who use or threaten to use a deadly weapon during specified offenses related to prostitution in s. 796.07(3), F.S.
- Directs that \$4500 of the civil penalty be paid to DCF to fund safe houses and short-term safe houses.

The bill has an indeterminate fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1277e.JDC

DATE: 4/26/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Qualifying Offenses (Sections 3, 7 and 8)

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

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:

- Section 787.01, F.S. (kidnapping)
- Section 787.02, F.S. (false imprisonment)
- Section 787.025(2)(c), F.S. (luring or enticing a child) where the victim is a minor and the defendant is not the victim’s parent or guardian)
- Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.¹
- Section 794.05, F.S. (unlawful activity with certain minors)
- Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
- Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
- Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.)
- Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.)
- Section 827.071, F.S. (sexual performance by a child)
- Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
- Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.²
- 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 has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described above. 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;

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 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 offense of incest,³ where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender.

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

² Section 947.0135(6), F.S., provides that it is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of s. 947.0135, F.S.

³ Currently, s. 826.04, F.S., provides that whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest. Incest is punishable as a 3rd degree felony.

Sexual Predator and Sexual Offender Registration (Sections 1, 3, 7, 8, 11, and 12)

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. 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.

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁵ 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.⁶ The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.

A sexual predator or sexual offender is also required to report any changes to his or her registration information. 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.⁷ 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.

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, during initial registration, to provide to the sheriff's office:

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

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

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Permit sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of seven days or more is outside of the United States.
- Require sexual predators and offender 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 the sheriff to notify the applicable law enforcement agency in the country where the offender intends to reside.

Sexting (Section 2)

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as sexting. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20% of teens (ages 13-19) and 33% of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves electronically.⁸ Additionally, 39% of teens and 59% of young adults had sent sexually explicit text messages.⁹

⁴ See generally, ss. 775.21, 943.0435 and 944.607, F.S.

⁵ 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. Sections 775.21 and 944.607, F.S.

⁶ See generally, ss. 775.21, 943.0435 and 944.607, F.S.

⁷ *Id.*

⁸ "Sex and Tech: Results from a survey of teens and young adults." The National Campaign to Prevent Teen and Unplanned Pregnancy. December 10, 2008.

⁹ *Id.*

There are no statutes that specifically address sexting. Under current law, a person who “sexts” another could be charged with a variety of offenses, such as transmission of pornography¹⁰ or computer pornography,¹¹ depending on the nature of the image sexted and the age of the person to whom the image was sent. Additionally, a person who receives and possesses an image that is the result of sexting could be charged with a criminal offenses, depending on the nature of the image sexted. For example, in 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriend’s friends and family after an argument. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

Similarly, in other jurisdictions, law enforcement officers and district attorneys have begun prosecuting teens who sext under laws generally reserved for those who produce, distribute, or possess child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with “provocative” images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a 5-week after school program and probation.¹² Similar incidents have occurred in Massachusetts, Ohio, and Iowa.¹³ As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors.

Effect of the Bill

The bill creates s. 847.0141, F.S., entitled “Unlawful electronic communication between minors; possession of visual depiction of another minor.” The bill makes it unlawful for a minor to:

- Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors.
- Intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.

The above-described acts are not unlawful if all of the following apply:

- The minor did not solicit the visual depiction.
- The minor took reasonable steps to report the visual depiction to the minor's parent or guardian or to a school or law enforcement official.
- The minor did not transmit or distribute the visual depiction to a third party.

Violations of the above-described prohibited acts are punishable as:

- A noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The bill authorizes the court to also order suitable training concerning such offenses and to prohibit the use or possession of electronic devices.¹⁴
- A 2nd degree misdemeanor¹⁵ for a violation that occurs after being found to have committed a noncriminal sexting offense. The bill requires the court to order suitable training concerning such offenses and to prohibit the use or possession of electronic communication devices.
- A 1st degree misdemeanor¹⁶ for a violation that occurs after being found to have committed a 2nd degree misdemeanor sexting offense. The court must order suitable training concerning such

¹⁰ Section 847.0137(2), F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person commits a 3rd degree felony.

¹¹ Section 847.0135, F.S., makes it a 3rd degree felony for a person to knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer; make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor; knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

¹² Amanda Lenhart, *Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging*, Pew Research Ctr., 3 (Dec. 15, 2009), available at http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited Jan. 24, 2011).

¹³ *Id.* See also, Vicki Mabrey and David Perozzi, ‘Sexting’: Should Child Pornography Laws Apply?, ABC NEWS (Apr. 1, 2010), available at <http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790> (last visited Jan. 24, 2011)

¹⁴ Electronic devices include but are not limited to cellular telephones, cameras, computers, or other electronic media devices.

¹⁵ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

offenses or, if ordered by the court in lieu of training, counseling. The court must also prohibit the use or possession of electronic devices.

- A 3rd degree felony¹⁷ for a violation that occurs after being found to have committed a 1st degree misdemeanor sexting offense. The court must order a mental health evaluation by a qualified practitioner, as defined in s. 948.001, F.S., and treatment, if recommended by the practitioner.

The bill requires a law enforcement officer who arrests any person charged with any offense described above to seize the prohibited material and take the material into his or her custody to await the sentence of the court. The bill requires the court to order the confiscation of the unlawful material and authorizes the law enforcement agency in which the material is held to destroy the unlawful material.

The bill specifies that the above provisions do not prohibit the prosecution of a minor for a violation of any law of this state if the electronic communication includes the depiction of sexual conduct or sexual excitement and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 3, 6, 7, and 8)

In addition to providing the above-described information during initial registration, a sexual predator or sexual offender is required to provide the sheriff any instant message name the offender wants to use.¹⁸ Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹⁹

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 “any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or PIN number.” The bill specifies that an offender’s voluntary disclosure of his or her date of birth, social security number, or PIN number as an Internet identifier waives the disclosure exemption for such personal information. Sexual predators and offenders will now 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.²⁰

Search of Registration Information (Section 4)

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,²¹ to conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

Effect of the Bill

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

¹⁶ 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.

¹⁷ 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.

¹⁸ See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹⁹ 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.

²⁰ 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.

²¹ These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

Removal of the Requirement to Register as a Sexual Offender (Section 5)

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.²² However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.

Sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release may 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.;
- 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.²³

Sexual offenders defined in 943.0435(1)(a)1.b., F.S., can have the registration requirement removed if he or she provides FDLE with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued that states that such designation has been removed or demonstrates to FDLE that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of Florida.²⁴

Section 943.04354, F.S.

A person can be considered for removal of the requirement to register as a sexual offender or sexual predator if the person:

- 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.;
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- 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.

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

²² Sections 775.21(6) and 943.0435(11), F.S.

²³ 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.

²⁴ Section 943.0435(11)(b), F.S.

sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or sexual predator.²⁵ 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.²⁶

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 sexual predator.²⁷ 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.²⁸

Effect of the Bill

The bill amends s. 943.04354, F.S., to change the victim age criteria that must be met before a person can be removed from the registry. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or sexual predator if the person:

- 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.;
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- Is not more than 4 years older than the victim of this violation who was 13 years of age or older but not more than 18 years of age at the time the person committed this violation.

The bill also removes the requirement that only those persons that have been convicted of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., on or after July 1, 2007, are eligible to be considered for removal of the requirement to register as a sexual offender or sexual predator. This would allow all persons convicted of those offenses, and that also comply with the above requirements, to be considered for removal of their sexual offender registration requirements.

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

Definition of Risk Assessment (Section 9)

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

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ 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.

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

Effect of the Bill

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

Conditions of Supervision – Sex Offender Treatment (Section 10)

Section 948.03, F.S., sets forth the standard conditions of probation that offenders must comply with. Standard conditions of probation do not require oral pronouncement at sentencing.²⁹ In contrast, special conditions of probation, those conditions that are not specifically authorized by statute, must be imposed by oral pronouncement at sentencing and be included in the written sentencing order.³⁰

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.³¹

Effect of the Bill

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

The bill also removes the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended.

The Florida Safe Harbor Act (Sections 13-25)

Background

Sexual Exploitation

Current law references sexual exploitation in the definition of “sexual abuse of a child.”³² Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution; or engage in a sexual performance, as defined by Chapter 827, F.S.³³ Prostitution is the giving or receiving of the body for sexual activity for hire, but excludes sexual activity between spouses.³⁴ It is unlawful to offer to commit, to commit, or to engage in prostitution, lewdness, or assignation.³⁵ The prohibition against these acts exists without respect to the age of the person offering, committing, or engaging in prostitution.

A first offense for prostitution is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony.³⁶ In addition to the criminal penalties, a civil penalty of \$500 can be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.³⁷

²⁹ Section 948.03(1), F.S.

³⁰ Section 948.039, F.S.

³¹ 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.

³² Section 39.01(67), F.S.

³³ Section 39.01(67)(g), F.S.

³⁴ Section 796.07(1)(a), F.S.

³⁵ Section 796.07(2)(e), F.S.,

³⁶ Section 796.07(4), F.S.,

³⁷ Section 769.07(6), F.S.

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony.³⁸ However, a person commits a first degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.³⁹

Sex-Trafficking and Prostitution of Children

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.⁴⁰

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.⁴¹ In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests /detentions for crimes related to juvenile prostitution in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.⁴²

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest.⁴³ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁴⁴

Services Currently Available for Shelter

If a child in the Department of Children and Family Services' (DCF) care is missing, the case worker fills out a Missing Child Report, which details the child's disappearance, including involvement in prostitution.⁴⁵

DCF acknowledges that minimal and inappropriate shelters exist for victims of sexual exploitation since victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.⁴⁶

³⁸ Section 796.045, F.S.

³⁹ *Id.*

⁴⁰ Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf. (last visited 4/26/11)

⁴¹ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Francis T. Miko & Grace Park, *Trafficking in Women and Children: The U.S. and International Response*, p. 7. (Updated July 10, 2003), at <http://www.usembassy.it/pdf/other/RL30545.pdf>. (last visited 4/26/11).

⁴² Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, p.22-26, *University of New Hampshire Sage Publications*

⁴³ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, pp. 7-8. University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf.

⁴⁴ *Id.*

⁴⁵ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

⁴⁶ *Id.*

DCF may also use the State Inpatient Psychiatric Placement, which provides secure housing and services. The program includes lengthy assessment that must be performed prior to placement.⁴⁷ Unfortunately, exploited children tend to leave before services and placement is finalized.⁴⁸

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by the Department of Juvenile Justice (DJJ).⁴⁹ These shelters are primarily voluntary and a court may order the child to stay in shelter for a period no longer than 120 days.⁵⁰ Even under this longer stay option, only 10 are available statewide.⁵¹ But since most sexually exploited children are adjudicated dependent, they would not be eligible for CINS service.⁵²

If a judge finds that a child is either in contempt of the court or in need of an extremely safe treatment environment, the judge may place the child in a locked setting for up to 120 days.⁵³ Reductions in funding have resulted in fewer than 10 children served per year under this type of physically secure placement.⁵⁴ There is simply not enough availability to consider this placement as a viable option for exploited children.

Effect of the Bill

The bill creates the Florida Safe Harbor Act to provide special care and services to all sexually exploited children in the dependency process. One of the policy changes the bill makes is creating a rebuttable presumption that children have been sexually exploited when committing acts such as prostitution. Under this change, if a law enforcement officer encounters a child engaged in prostitution, the officer must presume the child has been sexually exploited and must transfer the child to a short-term safe house, if one is available.

Definitions

Specifically, the bill amends the following definitions in s. 39.01, F.S.:

- “Abuse” is amended so that it includes sexual abuse.
- “Child who is found to be dependent” is amended so it includes children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will place sexually exploited children within dependency actions.
- “Sexual abuse of a child” is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child. The effect of these changes to the definition of “sexual exploitation of a child” will create additional grounds for sexual exploitation so that an individual is also held responsible for the voluntary act of the child offering to engage in or engaging in prostitution.

Transfer to a Short-term Safe House

The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver a sexually exploited child to a short-term safe house if one is available. The effect of this change will require a law enforcement officer to deliver a youth who is being sexually exploited to a safe house, regardless of whether the child is a repeat offender or voluntarily engaging in prostitution.

⁴⁷ Section 39.407, F.S.

⁴⁸ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

⁴⁹ *Id.*

⁵⁰ Section 984.226, F.S.

⁵¹ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

⁵² *Id.*

⁵³ Section 984.226, F.S.

⁵⁴ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

Shelter Placement

The bill amends s. 39.402, F.S., by creating a rebuttable presumption on placement of a sexually exploited child in a short-term safe house. The bill requires DCF, at the hearing to continue shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is most appropriate. The bill also adds sexual exploitation to the list of conditions which show reasonable effort by DCF to prevent or eliminate the need for removal. The effect of these changes will get a sexually exploited child into shelter and treatment for prostitution rather than processed through the criminal justice system.

Disposition Hearings

The bill also amends s. 39.521, F.S., to add sexual exploitation as one of the reasons a child cannot safely remain at home in findings by the court during a disposition hearing. Additionally, the bill requires the court to commit a victim of sexual exploitation to a safe house when the child has been adjudicated dependent. The effect of these changes will provide cause for the court in a dependency action to remove a child from the home who has been sexually exploited to place the child in a safe house.

Safe-Harbor Placement

The bill creates s. 39.524, F.S., relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed by DCF for placement in a safe house. Such child must be placed in a safe house if placement is warranted and if one is available. The bill also requires all safe houses that receive children to report to DCF its success in achieving permanency for those children, and requires DCF to report to the Legislature on the placement of children in safe homes during the year

Safe Harbors for Sexually Exploited Children

The bill also creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation. The bill creates definitions for:

- “Child advocate” for sexually exploited children to ensure short-term safe houses are staffed by individuals trained to best assist the child.
- “Safe house” as a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- “Secure” means that a child is supervised 24 hours a day by staff who are awake while on duty.
- “Sexually exploited child” to mean a dependent child who has suffered sexual exploitation, as defined in s. 39.01(67)(g), F.S., and who is ineligible for relief and benefits under the federal Trafficking Victims Protection Act.
- “Short-term safe house” means a shelter operated by a licensed child-caring agency, includes runaway youth center that has set aside gender specific, separate, and distinct living quarters for sexually exploited children, and provides care and counseling to exploited children.

Short-term Safe and Long-term Safe Houses

Also in s. 409.1678, F.S., the bill directs each of the DCF circuits to address the needs of sexually exploited children as a component of a master plan. The bill provides that the lead agency, not-for-profit agency, or local government entity that is providing safe house services is responsible for security, counseling, residential care, food, clothing etc. for children who are placed there. The lead agency or other service provider has legal authority over the child as provided in Chapter 39 and has authority to utilize resources as needed for the child’s health and education. The bill also provides that the local circuit administrator may contract with local law enforcement, to the extent funds are available to train officers working with sexually exploited children.

Prohibitions of Prostitution

The bill amends s. 796.07, F.S. amending the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of \$500 must be assessed against a person who violates s. 796.07(2)(f), by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill will amend the section by increasing the civil penalty to

\$5,000 and directing that \$4,500 of the penalty be paid to DCF to fund safe houses and short-term safe houses and the remaining \$500 shall be paid to the circuit court administrator. The effect of these changes creates a proposed funding source for the safe houses for sexually exploited children.

Eligibility for Award

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation to be eligible for compensation (awards) per Chapter 960, Victims Assistance.

Release or delivery from Custody

The bill amends s. 985.115, F.S., to include short term safe house as an option for the release of a child after they have been taken into custody.

Juvenile Delinquency

The bills amends s. 985.145, F.S. and s. 985.15, F.S., by prohibiting juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

Severability Clause (Section 26)

The bill provides the following severability clause:

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. SECTION DIRECTORY:

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

Section 2. Creates s. 847.0141, F.S., relating to unlawful electronic communication between minors; possession of visual depiction of another minor.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4 Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 5. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 6. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 7. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 8. Amends s. 944.607, F.S., relating to notification to the Department of Law Enforcement of information on sexual offenders.

Section 9. Amends s. 947.005, F.S., relating to definitions.

Section 10. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 11. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 12. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 13. Cites sections 13-25 of the bill the "Florida Safe Harbor Act."

Section 14. Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening,

Section 15. Amends s. 39.01, F.S., relating to definitions.

Section 16. Amends s. 39.401, F.S., relating to s. taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

Section 17. Amends s. 39.402, F.S., relating to placement in a shelter.

Section 18. Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 19. Creates s. 39.524, F.S., relating to safe-harbor placement.

Section 20. Creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

Section 21. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 22. Amends s. 960.065, F.S., relating to eligibility for awards.

Section 23. Amends s. 985.115, F.S., relating to release or delivery from custody.

Section 24. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 25. Amends s. 985.15, F.S., relating to filing decisions.

Section 26. Provides for severability.

Section 27. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

A new revenue source is created in this bill which is from a civil penalty of \$4,500 related to prostitution. The revenues are generated from violations related to prostitution.

2. Expenditures:

The Criminal Justice Impact Conference met on April 4, 2011 and determined the bill will have an insignificant impact on state prison beds. The bill may have a prison bed impact on the Department of Corrections in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. However, failure to register is generally punishable as an unranked 3rd degree felony, so the impact to state prison beds will likely be insignificant.

FDLE reports that the bill will require them to spend \$50,450 in nonrecurring funds to hire contract programming staff. In their analysis of CS/HB 1277, FDLE stated:

This funding is necessary to hire contract programming staff to complete the 646 hours of programming and testing necessary to implement the requirements of this bill. FDLE recommends the effective date of this bill be moved to April 30, 2012 to allow time to complete previous legislatively mandated enhancements, to advertise, interview, hire and background the new programmer to perform the work, test and implement the system, and conduct a knowledge transfer.

Total Costs: \$48,450 (programming costs) + \$2,000 (equipment) = Total Estimate \$50,450

The revised programming accounts for expanded capture of Internet Identifiers, collection of passport and immigration docs and the addition of "Incest" as a qualifying offense.

According to FDLE, they will be able to absorb these costs with existing resources.

The bill states that costs for safe houses are contingent on available appropriations in the General Appropriations Act. DCF reports that other similar residential facilities under the department's purview cost \$350 per child per day.⁵⁵

The State Courts System cannot determine the bill's fiscal impact associated with the potential increase in judicial workload due to lack of data.⁵⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁵⁵ Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

⁵⁶ Office of the State Courts Administrator 2011 Judicial Impact Statement (2/2/2011). (on file with committee staff).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The first amendment:

- Deleted language that expanded the definition of "sexual offender" in ss. 943.0435, F.S., to include persons released on or after October 1, 2011, from any sanction imposed for any felony conviction who has a prior qualifying conviction.
- Required sexual predators and offenders to provide passport information, immigration document information, and other specified information to the sheriffs as part of the registration process.
- Deleted the provision relating to the offense of "sexting."
- Deleted the provision that created a new section of statute that provided an additional way in which sexual offenders could be removed from the registry.

The second amendment removed a duplicative requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended.

On April 15, 2011, the Appropriations Committee adopted a strike everything amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Removes the requirement that only those persons that have been convicted of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., on or after July 1, 2007, are eligible to be considered for removal of the requirement to register as a sexual offender or sexual predator.
- Creates s. 847.0141, F.S., which makes it unlawful for a minor to: Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors, and; intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.
- Clarifies when a sexual offender must produce a passport or provide documents establishing immigration status.
- Changes the effective date to April 20, 2012.

On April 21, 2010, the Judiciary Committee adopted an amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Changes several definitions relating to sexual exploitation;
- Requires delivery of children alleged to be dependent and sexually exploited to short-term safe houses, if one is available;
- Provides rebuttable presumptions of law that placement in safe houses is necessary for sexually exploited children;
- Amends the civil penalty for specified violations of prostitution from \$500 to \$5,000 and applies it to violators who solicit, induce, entice or procure another to commit prostitution, lewdness, or assignation.
- Revises the civil penalty so that it also applies to violators, 16 or older in age, who use or threaten to use a deadly weapon during specified offenses related to prostitution in s. 796.07(3), F.S.
- Directs that \$4500 of the civil penalty be paid to DCF to fund safe houses and short-term safe houses.

This analysis is drafted to the Judiciary Committee Substitute.