

# Criminal and Juvenile Justice Information Systems Council

## JESSICA LUNSFORD TASK FORCE

FEBRUARY 2006  
Amended Version



### At A Glance

The Jessica Lunsford Act was created by the 2005 Florida Legislature in response to the tragic abduction and murder of 9 year old Jessica Lunsford of Homosassa, Florida. The act provided a comprehensive approach toward strengthening criminal penalties for sex offenses, specifically offenses perpetrated against children, and the expansion of sex offender registration requirements. The act also called for the creation of a task force to explore information sharing between criminal justice agencies. The task force consisted of the membership of the Criminal and Juvenile Justice Information Systems (CJJIS) Council, and would provide findings and recommendations to the Governor and Legislature as a result of its endeavor. The task force concluded with recommendations including continued implementation of the Jessica Lunsford Act, consistent statewide information sharing, increased use of technology and enhanced disposition reporting.

### Scope and Method

The methodology utilized to obtain the Jessica Lunsford Task Force findings and recommendations consisted of common issues presented and discussed during three regional task force meetings which took place in Tampa, Ft. Lauderdale and Jacksonville Florida. The task force examined the collection and dissemination of offender information to the court, prosecuting attorney, defense counsel and county probation officials at first appearance and subsequent hearings. Combined public meeting attendance was 107 and 21 individuals from the courts, law enforcement, corrections and private organizations presented viewpoints and feedback to the task force regarding best practices, obstacles and improvements to increase the accuracy and flow of offender information within the criminal justice system. Additionally, the task force attended a first appearance hearing in Hillsborough County for a first hand view of the process. Common issues identified by council members were gathered and consolidated into major findings and recommendations that fell within the scope and charge of the task force.

## FINDINGS & RECOMMENDATIONS

**FINDING #1** – *Judges do not always have access to offender information, specifically criminal history and immigration information, at both first appearance and subsequent hearings. Additionally, judges don't always have definitive information distinguishing subject identity due to the use of aliases and similar names.*

**Recommendation #1** **Continue implementation of the Jessica Lunsford Act.**

### **1.1 Continue implementation of the current Jessica**

**Lunsford Act:** The Act requires: 1) that judges are provided the technology in all courtrooms to automate the access to relevant information about offenders in order to make determinations about release of the offender; 2) that the Department of Corrections provide a chronological list of a high risk sex offender's history accessible to judges. These requirements, when fully implemented will provide the judges with automated access to a complete criminal history of these offenders at first appearance. Courtroom technology funding is part of appropriation for Office of State Court Administrator (OSCA) as part of the Jessica Lunsford Act.

**1.2 Extend automation to provide participants in the criminal justice system, at court proceedings, access to offender information, as authorized by state and federal law, at first appearance and all subsequent hearings for all offenders.** The technology developed in 1.1 should be used to provide information on all offenders, not just those who are categorized as high risk sex offenders. The information provided should include all FCIC/NCIC criminal history, warrant and any status records such as immigration and probation status.

**1.3 Promote the use of Biometric capability at court proceedings:** specifically "two digit" fingerprint readers, to increase the accuracy of subject identification and verification of criminal history, as authorized by state and federal law, to criminal justice participants at first appearance and subsequent hearings. The FALCON plan includes the ability to access criminal history information via a "Rapid ID" fingerprint check. This capability should be available in the near future and is funded by the Legislature as part of FDLE's Integrated Criminal History System. Technology funding is part of the appropriation for OSCA in the Jessica Lunsford Act.

**FINDING #2** – *There is inconsistency statewide as to how judges access information in the courtroom at first appearance, whose responsibility it is to provide complete information to the judge and who is present in the courtroom to provide it also varies during weekend and holiday periods. In some counties it may be the state attorney, in others it could be the county pretrial release, the court administrator, or the booking agency. There is also inconsistency as to what information the judge has available at the time of first appearance ranging in some counties with a dossier of local, state and federal criminal history and warrant data to at least one county that only provides data from its own county records system, unless the offender has resided in the county for less than 6 months. In many counties, particularly those with high volume arrests, the procedure for the agency to gather information and prepare for first appearance begins as early as 4AM and first appearance is an all-day function.*

**RECOMMENDATION #2** **Implement a consistent process statewide for information sharing at first appearance and all subsequent hearings.**

- 2.1 Require in each circuit that the Chief Circuit judge in consultation with the clerk of the court, court administrator, state attorney, public defender and any other pretrial court program, determine the manner in which criminal history information is presented at first appearance and all subsequent court proceedings. The booking agency should be the responsible agency for providing criminal history information on all offenders appearing before first appearance to the agency designated by the Chief Circuit judge. *(Corrected 2/28/06 to accurately reflect task force recommendation and proposed legislative language, see pg. 5)*
- 2.2 Ensure all entities responsible for providing information at first appearance are funded adequately to perform this function.
- 2.3 Support and endorse the Department of Corrections' (DC) efforts to create electronic access to information regarding a subject's recent probation/parole behavior and arrest patterns, including automated access to the DC probation case notes. It is critical to the court to have a resident resource to interpret case notes. The OPPAGA report 04-58 recognizes the need for resources which may be best accomplished by having properly trained and experienced non-sworn DC liaisons at probation related hearings.

While this information will be available on high risk sex offenders, the judge needs information from probation records beyond that limited group of offenders. Adequate funding needs to be made available to the Department of Corrections to accomplish the recommendation.

- 2.4 Ensure that all judges and court officials handling first appearance hearings have adequate training in criminal procedure and disposition.
- 2.5 Prominently display the status of a sexual offender or sexual predator on the Violation of Probation forms (DC3-216 and DC3-202) provided to the judge by the Department of Corrections. This can be accomplished without legislation with the agreement of the Department of Corrections.

**FINDING #3** - *Technical solutions are not effectively being utilized or are not fully funded to ensure the most complete and accurate information is available to all members of the criminal justice community to enhance public safety. There are about 350,000 warrants in the Florida Crime Information Center (FCIC) and even fewer Florida warrants, about 98,000, in National Crime Information Center (NCIC). Most agencies cite lack of resources for data entry and validation as the number one reason why warrants are not entered into the system. It is quite possible that a person whose warrant was not entered into the system will be released from jail or bonded at first appearance without the appropriate authority ever knowing the warrant existed. When images are available they can be included in the warrant and status records of FCIC/NCIC. Probation status records currently have images, however, except for select groups, probationers can refuse to have their photo taken.*

**RECOMMENDATION #3** **Increase the use of technology and state credentialing to enhance information sharing and support public safety.**

- 3.1 Explore the feasibility of implementing a statewide paperless warrant system in each county similar to the one already established in Broward County. *(See proposed legislative language—pg. 5)*

- 3.2 Fund livescan equipment for local agencies and juvenile assessment centers to ensure arrests are submitted to the state repository and available to the criminal justice community statewide in a timely manner.
- 3.3 Fund livescan equipment for courtrooms to ensure that all arrests are included in the statewide criminal history file, including those that are direct filed and those that result from a notice to appear.
- 3.4 Require all probationers to submit to a photo that can be shared and made available to all criminal justice agencies. (See proposed legislative language—pg. 6)
- 3.5 When images are available, the entering agency should append the image to warrants in FCIC/NCIC.
- 3.6 Explore the feasibility of adding information to driver licenses that would readily identify sex offenders.

**FINDING #4** – *Criminal History information is a critical factor in the decisions that judges make at first appearance and subsequent court hearings. For the information to be relevant it must be complete. Missing dispositions are an obstacle when a decision needs to be made based on previous convictions. Today, juvenile arrests are required to be submitted to the state repository yet the clerks of court are not mandated to provide juvenile disposition information. While adult disposition data is part of the clerk's mandate, often there are technical obstacles in their local records management systems or the manner to which the information is captured that preclude the dispositions from updating on line to the repository.*

**RECOMMENDATION #4:** Enhance disposition reporting to the state repository.

- 4.1 Support proposed legislation to mandate the clerks of court to provide juvenile dispositions to FDLE. This legislation is being proposed by FDLE and the Florida Association of Court Clerks (FACC).
- 4.2 The CJJIS Council shall establish performance standards at the county level equivalent to those at the state repository for the percentage of felony dispositions available in the criminal history file. The reporting of these standards shall be a standing item on the council's agenda. Quarterly reports shall be generated by FDLE and provided to the FACC for distribution.

**FINDING # 5** — *Section 12 of the Jessica Lunsford Act specifically includes s. 827.071, F.S. as an offense which would trigger the requirement of electronic monitoring, if “the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older...” However, s. 827.071, F.S., is NOT an offense subject to Conditional Release supervision. The Parole Commission indicated it cannot impose a condition of supervision requiring electronic monitoring unless that person commits a Conditional Release–eligible offense. Eligibility provisions set forth in s. 947.1405 (2), F.S., require Conditional Release supervision only on a crime which “is or was contained in category 1, category 2, category 3, or category 4” of the Florida Rules of Criminal Procedure. Section 827.071, F.S. is not a crime contained in any of these categories. The same thing holds true for the crime of Selling or Buying of Minors, under s. 847.0145, F.S. This crime is specifically listed in Section 12 of the Lunsford Act as requiring a special condition of electronic monitoring. However, this offense is not a Conditional Release–eligible offense because it is not a crime in Category 1, 2, 3, or 4, of the Florida Rules of Criminal Procedure. Testimony from State Attorneys, Public Defenders and a member of the Parole Commission revealed the potential need to clarify certain provisions of the Jessica Lunsford Act.*

*The Jessica Lunsford Act requires electronic monitoring for persons who violate probation. Confusion exists as to whether this includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level.*

**RECOMMENDATION #5:** Clarify existing legislation to ensure consistent implementation of the Jessica Lunsford Act in the state.

- 5.1 Clarify the language in the current statutes regarding those persons convicted of a violation of 827.071, F.S. or 847.0145, F.S. if they are to be subject to electronic monitoring under Conditional Release Supervision. Proposed modification of s. 947.1405(7)(a) should state:

**5.1** “(7)(a) Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has previously been convicted of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145 and shall be subject to conditional release supervision, and shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission.”  
(See proposed legislative language—pg. 6)

**5.2** Consider adding additional serious criminal offenses, specifically kidnapping under ch. 787, F.S., aggravated stalking under s. 784.048, F.S., selling minors into sex trafficking or prostitution, under s. 796.03, F.S., computer pornography under 847.0135, F.S., transmission of pornography by electronic device or equipment, under s. 847.0137, F.S., and transmission of material harmful to minors to a minor by electronic device or equipment, under s. 847.138, F.S. to those eligible for Conditional Release supervision and electronic monitoring. If not made subject to Conditional Release provisions, these offenders will continue to just walk out of prison, free of any constraints, without any supervision or period of electronic monitoring.

**5.3** Section 948.063 mandates electronic monitoring for persons who have been previously designated as sexual predators or offenders and who violate probation or community control. Funding for electronic monitoring must be provided to county agencies providing probation services. Further clarification is necessary.

**FINDING #6** *Testimony was taken regarding the observation that the sex offender registry contains persons who are required to register for crimes that would not be a crime except for the age of the victim at the time of the offense (i.e., consensual sex between boyfriend and girlfriend).*

**RECOMMENDATION #6** - While not under the information sharing purview of the Jessica Lunsford Act task force, the Legislature should be aware of the finding and assess whether any actions are warranted.

### **CJJIS Council Members**

**Marsha Ewing, Chair**

Martin County Clerk of Court

**Richard Roth, Vice Chair**

Sheriff, Monroe County

**Don Hunter**

Sheriff, Collier County

**Raymond Marsh**

Florida Department of Highway  
Safety & Motor Vehicles

**Carolyn Snurkowski**

Florida Attorney General's Office

**Scott McPherson**

Florida Department of Corrections

**Donna Uzzell**

Florida Department of Law  
Enforcement

**Orlando Martinez de Castro**

Chief, South Miami Police  
Department

**Dorene Thomas**

Chief, Pinellas Park Police  
Department

**Jane McElroy**

Florida Department of  
Juvenile Justice

**Mike Love**

Office of the State Courts  
Administrator

**John Douglas**

Florida Parole Commission

**Bob Dillinger**

Florida Public Defenders Association

**Mark Kohl**

Florida Prosecuting Attorneys  
Association

Task Force meeting minutes, summary testimony  
and supporting documents may be obtained by  
visiting the

CJJIS Council website

(<http://www.fdle.state.fl.us/CJJISCouncil/>) or con-  
tacting

Government Analyst

Chris Ferris (850.410.7116).



## Proposed Legislative Language

### 2.1 Fla. Stat. § 26 (2005)

The booking agency shall provide and certify to the court the state and national criminal history information and all relevant criminal justice information in the Florida Crime Information Center and National Crime Information Center for each offender appearing before the court at all first appearances. The chief circuit judge, in consultation with the clerk of court, court administrator, state attorney, public defender and any other pretrial court program, shall determine the manner in which that information is presented at first appearance and all subsequent court proceedings. The information that should be provided includes, but is not limited to:

Local, state and national criminal history information

Local, state and national warrant information

Status records from FCIC/NCIC such a probationer, sex offender, high risk sex offender, career criminal

Other identifying information including images if available

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### 3.1 Fla. Stat. § 943.08(2005)

An act related to law enforcement; creating a Statewide Paperless Warrant System Pilot program to review the feasibility of statewide implementation; providing the scope of the pilot program; providing a CJJIS Council overview process; providing for a report addressing the feasibility of implementing a statewide system; providing the appropriations for the development and implementation of the pilot program, and providing effective dates for completion.

Be it enacted by the Legislature of the State of Florida:

#### Section 1. Statewide Paperless Warrant System

(1) (a) The Florida Department of Law Enforcement shall review current initiatives at the state and local level to increase the data sharing capabilities within the criminal justice system and design and implement a pilot program reviewing the feasibility of electronic processing of warrant information at a statewide level. The process shall begin from the original entry of the warrant information at the clerk of courts office to the sheriff's office for service and the subsequent transmission of said data for entry into the state and national FCIC/NCIC warrant files. The results of the pilot program will be provided to the CJJIS Council who shall submit a preliminary report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than August 15, 2007.

The final report shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 15, 2008.

(b) The preliminary and final report shall:

- i. Identify all the criminal justice entities involved with the warrant process, their functions, duties and information collected;
- ii. Identify all of the statutory provisions, state and national standards related to the warrant process;
- iii. Identify the information sharing protocols at the local and state level that have to be addressed to implement a statewide system;
- iv. Identify the feasibility of implementing a statewide system;
- v. Ensure the capability for electronic transmission of the warrant data from the clerk of court to the sheriff's office, and subsequent transmission of said data for entry into the state and national FCIC/NCIC warrant files;
- vi. Design an application for the electronic transfer of warrant information that can be implemented statewide;
- vii. Include the benefits and costs analysis of the implementation of a statewide paperless warrant system; and
- viii. Include recommendations for statewide implementation of a paperless warrant system to include resources and funding estimates.

(2) (a) Appropriations for the development and implementation of the paperless warrant system pilot program are \$500,000 for the hiring of appropriate resources to design and develop the electronic data sharing program and to provide the pilot agencies with the associated costs for the implementation of the program.

### 3.4

#### Fla. Stat. § 948.03 (2005)

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

- (a) Report to the probation and parole supervisors as directed.
- (b) Permit such supervisors to visit him or her at his or her home or elsewhere.
- (c) Work faithfully at suitable employment insofar as may be possible.
- (d) Remain within a specified place.
- (e) Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.
- (f) Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.
- (g) Support his or her legal dependents to the best of his or her ability.
- (h) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.
- (i) Pay any application fee assessed under s. 27.52(2)(a) and attorney's fees and costs assessed under s. 938.29, subject to modification based on change of circumstances.
- (j) Not associate with persons engaged in criminal activities.
- (k) 1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances. 2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).
- (l) Be prohibited from possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer.
- (m) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (n) Submit to the drawing of blood or other biological specimens as prescribed in ss. 943.325 and 948.014, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.
- (o) Promptly submit to the taking of a digitized photograph at the request of a probation officer.

### 5.1

#### Fla. Stat. § 947.1405 (2005)

§ 947.1405. Conditional release program

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

(2) Any inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), or is convicted of any offense committed on or after July 1, 2006, under the following statutory sanctions:

1. aggravated stalking, under s. 784.048;

2. kidnapping, under s. 787.01;

3. false imprisonment, under s. 787.025;

4. luring or enticing a child, under s. 787.025;

- 5. human trafficking, under s. 787.06;
- 6. procuring person under age of 18 for prostitution, under s. 796.03;
- 7. sexual performance by a child, under s. 827.071;
- 8. computer pornography, under s. 847.0135;
- 9. transmission of pornography by electronic device or equipment prohibited, under s. 847.0137;
- 10. transmission of material harmful to minors to a minor by electronic device or equipment, under s. 847.138; or
- 11. selling or buying of minors, under 847.0145.

and who has served at least one prior felony commitment at a state or federal correctional institution;

- (b) Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084; or
- (c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be applicable to all sentences within the overall term of sentences if an inmate's overall term of sentences includes one or more sentences that are eligible for conditional release supervision as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If any inmate placed on conditional release supervision is also subject to probation or community control, resulting from a probationary or community control split sentence within the overall term of sentences, the Department of Corrections shall supervise such person according to the conditions imposed by the court and the commission shall defer to such supervision. If the court revokes probation or community control and resentsences the offender to a term of incarceration, such revocation also constitutes a sufficient basis for the revocation of the conditional release supervision on any nonprobationary or noncommunity control sentence without further hearing by the commission. If any such supervision on any nonprobationary or noncommunity control sentence is revoked, such revocation may result in a forfeiture of all gain time, and the commission may revoke the resulting deferred conditional release supervision or take other action it considers appropriate. If the term of conditional release supervision exceeds that of the probation or community control, then, upon expiration of the probation or community control, authority for the supervision shall revert to the commission and the supervision shall be subject to the conditions imposed by the commission. A panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

## **Criminal and Juvenile Justice Information Systems Council—Jessica Lunsford Task Force**

### **Amended FINAL REPORT— Re-Submitted February 28, 2006**

**\* Report amended in order to accurately reflect task force recommendation and proposed legislative language regarding Recommendation 2.1.**