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DATE: March 17, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 49

**RELATING TO:** Sexual Offenders

**SPONSOR(S):** Committee on Crime and Punishment & Representatives Albright, Ball & others

**STATUTE(S) AFFECTED:** Sections 775.21 and 944.606, F.S.

**COMPANION BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) CRIME AND PUNISHMENT YEAS 7 NAYS 0

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I. SUMMARY:

Florida Statutes contain two distinct provisions regarding sexual offender notification. Chapter 775, F.S., contains provisions which establish a select criteria for sexual **predator** designation, registration, and public notification. Section 944.606, F.S., requires the Department of Corrections (DOC) to notify certain law enforcement officials of the release into the community of specified felony sexual **offenders**.

Any citizen can obtain criminal history information on a sexual offender under Florida's public records law. Nonetheless, agency-initiated public notification was specifically prohibited of sexual **offenders** in 1996 as part of legislation which revised the sexual **predator** provisions. The committee substitute expressly authorizes agency-initiated public notification of sexual **offenders**.

Currently, the sexual **predator** provisions apply differently to three classes of predators based on when three differing provisions were enacted. This has created what has become known as three "tiers". The committee substitute makes the following modifications to the sexual **predator** provisions:

- ▶ Public notification of sexual predators will be uniformly mandated for all three tiers of predators. The method of notification for all three tiers will be "as deemed appropriate" by local law enforcement.
- ▶ The requirement in current statutes that the community notice for a sexual predator contain a description of the victim's age will be removed. In its place a requirement for a description of whether the victim was, at the time of the offense, a minor or an adult will be added.
- ▶ FDLE will be required to notify the public of all sexual predators through the Internet.

This bill raises *ex post facto* and due process clause considerations. See Comments, part A and B, page 9.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Florida Statutes contain two distinct provisions regarding sexual offender notification. Chapter 775, F.S., contains provisions which establish a select criteria for sexual **predator** designation, registration, and mandatory public notification. Section 944.606, F.S., the subject of this bill, requires the Department of Corrections (DOC) to notify certain law enforcement officials of the release into the community of all felony sexual **offenders**. Section 944.606, currently prohibits law enforcement agencies from initiating any notification other than through the procedures established in chapter 775 for sexual **predators**. However, anyone can obtain criminal history information on a sexual offender under Florida's public records law.

The sexual **predator** (Chapter 775) provisions address a subset of sexual **offenders**. This subset represents the most dangerous offenders as determined by the statutory criteria which earn them the designation of sexual **predator**.

In 1993, the Legislature enacted *The Florida Sexual Predators Act* in Chapter 775. The Act was amended in 1995 and again in 1996. Since the original Act and the two subsequent amendments apply to offenses committed after separate effective dates, three different tiers of notification and due process procedures are currently in place. The sexual offender provisions of Section 944.606 were first enacted in 1992. Like the sexual predator provisions, Section 944.606 has been amended in 1995 and 1996. The original Section 944.606 and subsequent amendments have never limited their application to offenses committed after their effective dates. A brief review of the history is helpful.

#### 1. Legislative History of Sexual Offender / Sexual Predator Provisions:

The 1992 version of section 944.606, required DOC, the Parole Commission and the Control Release Authority to notify certain law enforcement officials of the release of a sexual offender six months before discharge from custody. This law required notification to the sheriff of the county from which the offender was sentenced, the sheriff of the county in which the offender planned to reside and, if applicable, the chief of police of the municipality in which the offender planned to reside. Similar notification to law enforcement agencies and to any victims of **all** inmates released by DOC was required by the provisions of section 944.605, (this provision remains in statute). The 1992 version of section 944.606, specifically singled out sexual offenders convicted of any felony sexual offense. It did not specify whether law enforcement agencies could initiate public notification of sexual offenders released to the community at large. [s.3, ch. 92-76, Laws of Florida; s. 944.606, F.S. (1993)]

In 1993 the Legislature enacted *The Florida Sexual Predators Act*. The Act required a select class of sexual offenders, who met the specified criteria for sexual predator designation, to register with the Florida Department of Law Enforcement (FDLE) within 48 hours after entering a county of permanent or temporary residence. This Act provided for notification by FDLE to local law enforcement officials similar to that required of DOC by the provisions of section 944.606. Thus, after 1993, DOC was required to notify local law enforcement of the imminent release into the community of felony sexual **offenders** and FDLE was required to notify local law enforcement of a certain class of sexual

offenders who fit the criteria of sexual **predators**. Like the section 944.606 provision, *The Florida Sexual Predators Act* did not specify whether law enforcement agencies could *initiate* notification of a sexual predator's release to the community at large. Note: A citizen may obtain criminal history information through Florida's public records law. See ss. 119.07; 943.0575, F.S.

In 1995 and 1996, the Legislature amended the Chapter 775 sexual **predator** registration provisions to **require** local law enforcement agencies to initiate public notification. The 1995 law provided for public notification in a newspaper of general circulation. The 1996 law provides for public notification of any type deemed appropriate by the law enforcement agency.

## 2. Public Notification Restricted to Registered Sexual Predators:

However, the Legislature took opposing positions in those same years on public notification of sexual **offenders**, the provisions contained in section 944.606. In 1995, the Legislature amended section 944.606 to authorize DOC or any law enforcement agency to release verified information about a sexual offender, "in the interest of public safety." s.944.606(3), F.S. 1995. As well, the Legislature provided immunity from civil liability for the release of such information. s.944.606(4), F.S. 1995.

In 1996, the Legislature amended the sexual **predators** provisions (Chapter 775) to require local law enforcement agencies to notify the public in any manner deemed appropriate. At the same time, the Legislature amended the sexual **offender** provisions in 944.606 to expressly prohibit DOC or law enforcement agencies from notifying the public of a sexual offender's presence. This amendment provided that public notification was restricted to sexual **predators**, as provided by chapter 775. *Consequently, today a Sheriff or police chief is prohibited from publicizing the presence of a sexual offender in the community.*

Note: Public notification and registration laws are sometimes referred to as "Megan's law". These laws were triggered across the country in response to the 1994 killing of a young New Jersey girl named Megan Kanka by a released sexual offender living near her home. In 1996, the Congress enacted a federal statute which requires all states, when necessary for public safety, to release all relevant information on a sexual offender. Public Law 104-145 [H.R. 2137] May 17, 1986.

## B. EFFECT OF PROPOSED CHANGES:

If the committee substitute becomes a law, the following will happen:

- ▶ Local law enforcement officials will be required to notify the public of the presence in the community of sexual **predators** who committed their offenses between October 1, 1993 and October 1, 1995, (tier one predators). Notification shall be in a manner deemed appropriate by local law enforcement officials. There is no current authorization for public notification of these class of predators.
- ▶ Local law enforcement officials shall notify the public in any manner they deem appropriate for those sexual **predators** who committed their offenses between October 1, 1995 and October 1, 1996, (tier two predators). Currently, public

notification of these class of predators is mandated in a *newspaper of general circulation*.

- ▶ As a consequence of the above two changes, public notification of sexual predators will be uniformly mandated for all three tiers and the method of notification for all three tiers will be "as deemed appropriate" by local law enforcement
- ▶ The requirement in current statutes that the community notice for a sexual **predator** contain a description of the victim's age will be removed. In its place a requirement for a description of whether the victim was, at the time of the offense, a minor or an adult will be added.
- ▶ FDLE will be required to notify the public of all sexual predators through the Internet.
- ▶ Law enforcement agencies will have the discretion to notify the public of a sexual **offender's** presence, in the interest of public safety. The prohibition against agency-initiated public notification of sexual **offenders** contained in section 944.606, F.S. (1996 Supp.), will be deleted. (This prohibition was inserted by the Legislature last session).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

To the extent that the committee substitute requires tier one notification of sexual predators, this will increase the responsibilities and obligations of local law enforcement to initiate public notification of these predators.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill deletes the prohibition against agency-initiated public notification of sexual **offenders** and requires notification of tier one sexual predators. To the extent that a community is notified of the presence of a sexual offenders or predators in a given location, the individuals of that community are better informed. Those individuals will thus enhance their decision making when conducting their own affairs.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

While the bill does not authorize the government to prohibit sexual offenders or predators from moving into the community, it does allow, and in the case of predators, requires law enforcement agencies to publicize their presence in a community. Some might consider this government interference with a sexual offender's privacy rights.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

**D. SECTION-BY-SECTION ANALYSIS:**

1. Section One:

Amends section 775.21(4), F.S., by providing that tier one and tier two sexual predators are subject to the same community and public notification as currently exists for tier three sexual predators. Provides that notification shall be in a manner deemed appropriate by the sheriff or chief of police.

Amends 775.21(7), F.S., by removing the requirement that the community notice include a description of the victim's age and providing instead for a description of whether the victim was, at the time of the offense, a minor or an adult. Requires FDLE to notify the public of all sexual predators through the Internet.

2. Section Two:

Amends section 944.606, F.S., by deleting the prohibition against agency-initiated public notification of sexual offenders and providing that notification is authorized in the interest of public safety.

3. Section Three:

Provides that this act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

To the extent that the sheriff or police chief is required to notify the community of a sexual **predator's** presence, this bill may have a fiscal impact to state and local governments. Such impact is expected to be minimal, but a precise fiscal impact is indeterminate. The bill does not prescribe a particular method of notification and creates a cost saving in its deletion of the tier two requirement for newspaper notification. Thus, local law enforcement may choose the most cost-effective approach. This bill does not require state or local law enforcement agencies to expend funds to initiate public notification of sexual **offenders**. To the extent that law enforcement agencies choose to initiate such notification, this bill could have an indeterminate fiscal impact.

The requirement that FDLE notice the public of sexual predators through the Internet should not have a fiscal impact since this codifies current practice.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt for the requirement of Article VII, Section 18 of the Florida Constitution because it has an insignificant fiscal impact. As discussed above, the method of notification is in "any manner deemed appropriate" by local law enforcement. Thus, the aggregate costs to local governments should be insignificant.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. *EX POST FACTO* CONSIDERATIONS:

The *ex post facto* clause of the Federal and Florida Constitutions provide that the Legislature cannot increase the punishment of a crime and apply the increase retroactively. In previous years, the legislature has enacted the sexual predator provisions in Chapter 775 and provided that they were to apply prospectively. Consequently, no *ex post facto* challenges of these provisions have ever been made in Florida.

The committee substitute will require public notification retroactively in the case of tier one sexual predators and retroactively change the method of notification for tier two sexual predators. Courts from other jurisdictions have split on whether public notification of a

sexual offender violates the *ex post facto* clause. e.g., Doe v. Poritz, 142 N.J. 1, 662 A 2d 367(1995) (New Jersey Supreme Court holding that public notification's retroactive application does not violate *ex post facto* clause); Doe v. Pataki, 65 USLW 2243 (S.D.N.Y 1996) (Court overturning New York statute's retroactive application of public notification for sexual offenders). In analyzing whether a law violates *ex post facto*, the Courts have taken into account the Legislature's intention when passing the law. An *ex post facto* violation is more apparent when the Legislature's intent was to punish. An *ex post facto* violation is less obvious where the Legislature's intent was to regulate or protect the public.

#### B. DUE PROCESS CONSIDERATIONS:

The sexual predator provisions provide for hearings or for written court findings before designation and public notification is required. No hearing or written court findings are required by this bill. No hearing procedure was provided by the provisions of the 1995 version of section 944.606. A sexual **offender** who challenged public notification as a result of this bill could argue that he or she was denied due process or that sexual **predators** have been afforded more due process under the statutory scheme. On the other hand, one could argue that sexual predators are afforded hearings or written court findings because the designation as a **predator** is much more onerous. Further, this bill simply allows a law enforcement agency to publicize a public record.

#### VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute expressly states that public notification of sexual **offenders** is authorized, "in the interest of public safety". The original bill deleted the prohibition against public notification but did not expressly authorize notification.

The original bill did not address the sexual **predator** provisions contained in section 775.21, F.S. The committee substitute does the following:

- ▶ Requires public notification, as deemed appropriate by local law enforcement, for sexual predators who committed their offenses between October 1, 1993 and October 1, 1995, (tier one predators).
- ▶ Requires public notification, as deemed appropriate by local law enforcement, for sexual predators who committed their offenses between October 1, 1995 and October 1, 1996, (tier two predators).
- ▶ Removes the requirement in current law that the community notice for a sexual predator include a description of the victim's age and requires, in its place, a description of whether the victim was, at the time of the offense, a minor or an adult.
- ▶ Requires FDLE to notify the public of all sexual predators through the Internet.

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VII. SIGNATURES:

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