

STORAGE NAME: h3107s1.cp

DATE: February 12, 1998

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

**BILL #:** CS/HB 3107

**RELATING TO:** SEXUAL PREDATOR REGISTRATION

**SPONSOR(S):** REPRESENTATIVES FASANO AND EFFMAN

**COMPANION BILL(S):** SB 514(S)

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

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I. SUMMARY:

Section **775.21**, F.S. is known as the **Florida Sexual Predators Act**. It designates certain serious or repeat sex offenders as "sexual predators" requiring them to submit to pervasive registration requirements which assist law enforcement and the community to know of their presence and, thereby, reduce the likelihood that they will offend again.

The Act contains an amnesty provision whereby sexual predators who commit no crimes for a period of ten years may petition the court to remove the designation.

**The bill amends the amnesty provision by requiring 20 years of good behavior before becoming eligible to apply, by placing the burden of proof on the offender to show he no longer represents a threat to society, and by providing notice and opportunity for the state attorney to appear and present evidence in opposition to the petition.**

The bill provides an effective date of July 1, of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Florida's Sexual Predator Act**

Florida's Sexual Predator Act, s. 775.21, F.S. (1996 Supp.), is designed to track sex offenders during and after completion of their sentences. Designation as a sexual offender is mandatory for qualified offenders and requires an order from the court at sentencing. A sexual predator is defined as anyone convicted of a:

◆ capital, life or first-degree felony violation of:

- \* Section 794.011(2), F.S. (Sexual Battery On a Child Under 12),
- \* Section 794.011(3), F.S. (Sexual Battery With Deadly Force),
- \* Section 794.011(4), F.S. (Sexual Battery On a Helpless Victim)
- \* Section 794.011(5), F.S. (Sexual Battery With Slight Force),
- \* Section 794.011(8)(b), F.S. (Sexual Battery by Familial or Custodial Authority)
- \* Section 794.011(8)(c), F.S. (Attempted Sexual Battery with Injury of Sex Organs)
- \* Section 847.0145, F.S (Buying/Selling of Minors for Production of Pornography)

**OR,**

◆ any second-degree felony violation of

- \* Chapter 794, F.S. (Sexual Battery),
- \* Section 800.04, F.S. (Lewd or Lascivious Conduct),
- \* Section 827.071, F.S. (Procuring Sexual Performance by a Child), or,
- \* Section 847.0145, F.S. (Buying/Selling of Minors for Production of Pornography);

**AND,**

◆ the offender has previously been convicted of any violation of :

- \* Section 794.011(2), F.S. (Sexual Battery On a Child Under 12),
- \* Section 794.011(3), F.S. (Sexual Battery With Deadly Force),
- \* Section 794.011(4), F.S. (Sexual Battery On a Helpless Victim)
- \* Section 794.011(5), F.S. (Sexual Battery With Slight Force),
- \* Section 794.011(8), F.S. (Solicitation/Sex With a Minor),
- \* Section 794.023, F.S. (Sexual Battery by Multiple Perpetrators),
- \* Section 800.04, F.S. (Lewd or Lascivious Conduct),
- \* Section 827.071, F.S. (Procuring Sexual Performance by a Child),
- \* Section 847.0133, F.S. (Delivering Obscene Material To a Minor), or
- \* Section 847.0145, F.S. (Buying/Selling of Minors for Production of Pornography).

**How To Register**

The sexual predator is required to register directly with the Florida Department of Law Enforcement (FDLE), provide certain information, and be fingerprinted. In lieu of initially registering with the FDLE, the sexual predator may register with the Department of Corrections (DOC) or any law enforcement agency.

### **When To Register**

Each sexual predator who is residing permanently or temporarily in the state outside a correctional facility, jail, or secure treatment facility must register or be registered within 48 hours after entering the county of permanent or temporary residence. Any change in temporary or permanent address, also, must be provided within 48 hours.

Typically, a designated sexual predator must maintain registration with the FDLE for the duration of the offender's life. However, current law contains an amnesty provision. **If the offender breaks no laws for a period of 10-years, then he may petition the court for removal of the sexual predator designation.**

### **Penalties For Failure To Register**

A sexual predator who fails to register or be registered, or who fails, after registration, to provide location information, commits a third degree felony.

### **Notification of Presence of Sexual Predator**

Law enforcement must inform the community and the public of a sexual predator's presence "in a manner deemed appropriate" by the sheriff or police chief.

## **B. EFFECT OF PROPOSED CHANGES:**

The current sexual predator law contains an amnesty provision whereby a sexual predator may apply for removal of the designation if he or she commits no crimes (felony or misdemeanor) for a period of ten years.

### **The bill amends the amnesty provision by:**

**Requiring 20 years of good behavior before becoming eligible to petition to have the sexual predator designation removed;**  
**Placing the burden of proof on the offender to show he no longer represents a threat to society;**  
**Providing notice and opportunity to the state attorney to present evidence in opposition.**

## **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?

No.

(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?

N/A

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

N/A

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

N/A

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?

No.

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

No.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 775.21, F.S.

E. SECTION-BY-SECTION RESEARCH:

**Section 1:** Amends the amnesty provision with more stringent requirements, thereby making it more difficult to have the sexual predator designation removed.

**Section 2:** Provides an effective date.

III. FISCAL RESEARCH & 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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met on this bill, but it is expected that it will have no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision because it affects a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

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

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

V. COMMENTS:

**Retroactive Application of Florida's Sexual Predator Law**

Whether a law may be applied retroactively, without violating a defendant's protections against ex post facto laws depends upon whether the law constitutes a punishment. Miller v. Florida, 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed. 2d 351 (1987). Whether a law constitutes a punishment, in turn, depends upon the law's 1) intent, 2) design, 3) history, and 4) effects. Doe v. Pataki, 940 F.Supp 603, 620 (S.D.N.Y. 1996). Florida's sexual predator law consists of **registration** (informing local authorities of one's local address and any change therein) and **notification** (alerting the public about the presence of a sexual predator in their community) provisions.

Several jurisdictions have found retroactive application of the **registration** portion of sexual predator laws to be **non-punitive**. See, e.g., Artway v. Attorney General of New Jersey, 81 F. 3d 1235 (3d Cir. 1996); Artway v. Atty.General of New Jersey, 876 F.Supp 666 (D.N.J. 1995); and Rowe v. Burton, 884 F.Supp. 1372 (D.Alaska 1994). Likewise, Florida's sexual predator law was passed with a primary goal to protect society from sexual predators, not to punish the sexual predator.

In contrast, courts are split as to whether retroactive application of the **notification** portion of such laws constitutes punishment. See, Doe v. Pataki, 940 F.Supp 603, 620 (S.D.N.Y. 1996); Row v. Office of Adult Probation, 938 F.Supp. 1080 (D.Conn. 1996); Artway v. Atty.General of New Jersey, 876 F.Supp 666 (D.N.J. 1995); and Rowe v. Burton, 884 F.Supp. 1372 (D.Alaska 1994) (finding notification to be punishment which violates Ex Post Facto clause); W.P. v. Poritz, 931 F.Supp. 1199 (D.N.J. 1996); Stearns v. Gregoire, 124 F.3d 1079 (9th Cir. 1996)(finding notification is not a punishment and not violative of Ex Post Facto Clause). Hence, whether **notification** provisions constitute ex post facto laws is not settled. Only one Florida court has ruled on Florida's sexual predator law, which also

contains notification provisions, and it upheld retroactive application of the law. Significantly, however, it did not address those jurisdictions which found **notification** to be a form of punishment. See, Fletcher v. State, 22 Fla. L. Weekly D2264 (Fla. September 26, 1997).

Finally, it should be recognized that while federal analysis offers some support for retroactive application of notification provisions, Florida's constitution contains an express right to privacy, not contained in the federal constitution. See, Art. I, Sec. 23. This provision may affect the Florida Supreme Court's position on this issue.

### The Bill's Potential Effect On the Underlying Sexual Predator Law

There is a possibility that the bill could adversely affect the underlying sexual predator law. Currently, the law allows sexual predators to apply for designation as a sexual predator to be removed after ten years of crime-free behavior. Severely restricting the availability of the amnesty provision may contribute to a potential finding by the courts that the law is punitive in nature, thereby undermining the retroactive status of, either, the **registration** or **notification** provisions of Florida's sexual predator law, or both.

### Conclusion

Because no court has, yet, ruled registration of sexual predators to be a punishment, it is unlikely that retroactive application of the **registration** provisions of Florida's sexual predator law will be ruled unconstitutional, either. Nonetheless, severely restricting the availability of the amnesty provision could be seen by the courts as exposing a punitive intent in the act, itself. Hence, there is virtually no possibility the bill could have a detrimental impact on the retroactive application of the **registration** provisions of the law, there remains only a slight possibility that the bill could work to deny retroactive application of the **notification** provisions of the law.

Even if the courts were to forbid retroactive application of the **notification** provisions of the sexual predator law, that would not affect its constitutional standing for its **registration** provisions. Finally, even if the court were to strike the retroactive application of, both, the **registration** and **notification** provisions of the law, it would not affect the law's constitutional standing for prospective application. See, Cramp v. Board of Public Instruction of Orange County, 137 So. 2d 828 (Fla. 1962).

### Retroactive Application Of the Bill

The bill does not address whether the repeal of the amnesty provision should be applied retroactively to those persons who have already been designated sexual predators. Nonetheless, it is clearly the intent of the underlying (sexual predator) law that it is to be applied retroactively. That is, offenders are to be designated as sexual predators even though they committed their offense prior to passage of the sexual predator law. Consequently, it is likely that state authorities will view the bill as having retroactive application, as well. That is, sexual predators will be denied the opportunity to petition for

amnesty, even though the sexual predator law contained such an amnesty provision when they were designated.

It is logical to conclude from the foregoing ex post facto analysis of the registration and notification provisions of the sexual predator law that, if those provisions may be applied retroactively without violating the Ex Post Facto Clause, then curtailing the petition process which attempts to free the offender from those same requirements would not violate the Ex Post Facto Clause, either. See, also, Johnson v. State, 371 So. 2d 556 (Fla. 2nd DCA 1979) (While statutory changes in the law are normally presumed to apply prospectively, procedural changes are to be applied to pending cases.)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed favorably out of the Crime & Punishment Committee with one amendment, on February 3, 1998. The committee adopted a single strike-everything amendment which was sponsored by Rep. Fasano. This bill analysis reflects the substance of that amendment. The bill was made into a CS.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

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Jamie Spivey

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J. Willis Renuart