

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1510

SPONSOR: Criminal Justice Committee and Senator Burt

SUBJECT: Sexual Offenders and Sexual Predators

DATE: February 14, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	Forgas	Johnson	JU	Favorable
3.			APJ	
4.			AP	
5.			RC	
6.				

I. Summary:

This CS makes changes to the laws governing sexual predator and sexual offender registration to maintain Florida's compliance with the Federal Jacob Wetterling Act by addressing the requirements made by the Campus Sex Crimes Prevention Act. Compliance must be shown with these federal laws by the Fall of 2002 to protect ten-percent of the state's Federal Byrne Grant funding monies. The CS also clarifies and revises several provisions of the registration laws to ensure their consistency and enhance their operability.

Major provisions of the CS do the following:

- Require those predators and offenders who are attending a university or college or working on a campus to register that activity. It also requires registration for any transfer between campuses of the same school. This information is made available both to the state registry as well as to the schools.
- Clarify the registration process for sexual predators and offenders upon change of residence or name.
- Update the criteria offenses of sexual offenders to include recently adopted pornography transmission offenses.
- Clarify sexual offender obligations for offenders required to register in another state that move to Florida; and sexual offenders residing in Florida who are under another state's supervision.

This CS creates s. 943.0436, F.S., and substantially amends the following sections of the Florida Statutes: 775.21; 775.24; 943.0435; 943.0436; 944.606; and 944.607.

II. Present Situation:

Federal Sexual Predator and Sexual Offender Registration Laws

The Violent Crime Control and Law Enforcement Act of 1994 (PL. 103-322) contains the “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act” (codified at 42 U.S.C. 14071), which provides financial incentives for states to establish registration requirements for persons convicted of certain crimes against children and violent sexual offenses. States that fail to comply with the federal mandate are subject to a 10-percent reduction in Byrne Formula Grant funding. The federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program provides funding for state and local crime eradication efforts. The Wetterling Act requires states to allow law enforcement agencies to release relevant information about sexual offenders in order to protect the public. This act also requires states to provide for the registration of residents who were convicted of a sexual offense in another state.

Congress amended the Violent Crime Control and Law Enforcement Act of 1994 on October 28, 2000, with the passage of the Campus Sex Crimes Prevention Act. *See* PL. 106-386. Pursuant to this act, individuals required to register as a sex offender with a state must also provide notice to that state of any institution of higher education where the individual is employed, carries on a vocation, or is a student. These individuals are also required to report each change in enrollment or employment status at the institution.

This registration information must be made available to law enforcement agencies with jurisdiction where an institution of higher education is located, and states must ensure that the information is entered into the state sexual offender registry. Educational institutions are specifically not required to request the information from the state. Under the Campus Sex Crimes Prevention Act, educational institutions must advise the campus community of methods for obtaining sexual offender information. This act does not prohibit schools from disclosing sexual offender information provided to the institution.

Florida’s Sexual Predator Registration

Florida’s Sexual Predator Act is established in s. 775.21, F.S., and provides that an offender shall be designated as a sexual predator for certain statutorily designated sexual offenses. The sexual predator designation is made by the court sentencing the offender for an offense applicable to the sexual predator designation. This law provides legislative findings and intent regarding the necessity for sexual predator registration and community and public notification regarding sexual predators.

Section 775.21(6) F.S., specifies the type of information that must be provided by the predator in each instance of registration, and how it is to be collected, transmitted, maintained, and disseminated by the agencies responsible for implementing the law. Penalties are provided for the sexual predator’s failure to comply with the registration requirements and for misuse of public records information regarding sexual predators, s. 775.21(10), F.S.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with DOC and provide certain information. s. 775.21(6)(b), F.S. If the sexual predator is not in the custody or control of, or under the supervision of, DOC, or is not in the custody of a private correctional facility, and the predator resides in this state, the predator must register in person at an office of the Florida Department of Law Enforcement (FDLE), or at the sheriff's office in the county in which the predator resides, and must provide certain information. Registration procedures are also provided for sexual predators in the custody of a local jail or under federal supervision.

A sexual predator who is not incarcerated and resides in the community, including those under DOC supervision, must register in person at a driver's license facility of the Department of Highway Safety and Motor Vehicles (DHSMV).

A sexual predator who plans to establish residency in another state must report in person to the sheriff of the county of current residence or FDLE within 48 hours before date of departure to provide intended residence information. Failure to provide this information is a third degree felony pursuant to s. 775.21(6)(i), F.S.

As provided in s. 775.21(5)(d), F.S., a person who resides in Florida and who has been designated a sexual predator, a violent sexual predator or another sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, in the other state must register as a sexual offender in the manner set forth in the laws pertaining to sexual offender registration. ss. 943.0435 and 944.607, F.S. These out of state offenders are also subject to the community and public notifications and penalty provisions of the sexual offender laws.

Law enforcement agencies must inform members of the community and the public of a sexual predator's presence as set forth in s. 775.21(7), F.S. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff or the chief of police where the sexual predator resides must notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the sexual predator's temporary or permanent residence of the presence of the sexual predator. FDLE and DOC are required to verify the addresses of sexual predators, and that verification must be consistent with the provisions of the federal Jacob Wetterling Act.

A designated sexual predator must maintain registration with FDLE for the duration of the predator's life, unless a full pardon has been granted, or a conviction has been set aside for any felony offense meeting the criteria for the sexual predator designation. However, the law provides a mechanism for the sexual predator to petition for removal of the sexual predator designation after a certain period has elapsed, if the petitioner has had no arrests during that period and the court is otherwise satisfied the petitioner is not a current or potential threat to public safety.

Florida's Sexual Offender Registration

Registration requirements and other provisions relevant to certain sexual offenders (those not designated sexual predators) are provided in ss. 943.0435 and 944.607, F.S. Many of the requirements and provisions in these sections are similar, if not identical, to those provided for sexual predators under s. 775.21, F.S.

Community and public notification regarding registered sexual offenders is authorized but not mandated as provided by ss. 943.043 and 944.607(3)(d), and (4), F.S.

A sexual offender must maintain registration with FDLE for the duration of his or her life, unless a full pardon has been granted, or a conviction has been set aside for any offense meeting the criteria for the sexual offender designation. However, a petition for removal of the sexual offender registration requirements may be filed by a sexual offender who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and has not been arrested for any offense since release. A petition may also be filed by a sexual offender who was 18 years of age or younger at the time of the offense, had adjudication withheld, had 10 years elapse since being placed on probation and has not been arrested for any offense.

III. Effect of Proposed Changes:

This CS makes changes to the laws governing sexual predator and sexual offender registration to maintain Florida's compliance with the Federal Jacob Wetterling Act by addressing the requirements made by the Campus Sex Crimes Prevention Act. Compliance must be shown with these federal laws by Fall of 2002 to protect ten-percent of the state's Federal Byrne Grant funding monies. The CS also clarifies and revises several provisions of the registration laws to ensure their consistency and enhance their operability.

The CS amends s. 775.21, F.S. (sexual predators) to:

- Define "institution of higher education" and "change in enrollment or employment status."
- Provide that predators who enroll at or are employed on a campus must register that information when employment is commenced and terminated. It also requires registration for any transfer between campuses of the same school.
- For predators and criminal justice agencies, clarify the initial registration and subsequent procedures for predators' changes of address and name.
- Ensure transfer of registration information to the state sexual predator registry and clarify responsibilities.

The CS amends s. 775.24, F.S., to extend to 1 year the time agencies are allowed to move for relief from inappropriate court orders relating to registration. The change is consistent with Rule

1.540, Florida Rules of Civil Procedure, pertaining to time limitations for correction or relief from order.

The CS amends s. 943.0435, F.S. (registration of sexual offenders not under DOC supervision or incarcerated), to:

- Add to the definition of “sexual offender” new criteria offenses created by the 2001 Florida Legislature: transmission of child pornography by electronic device or equipment (s.847.0137, F.S.); and transmission of pornographic material harmful to a minor by electronic device or equipment (s.847.0138, F.S.).
- Clarify registration and notification obligations of sexual offenders residing in Florida who are under another state’s supervision and registration obligations of sexual offenders required to register in another state who move to Florida. The language tracks existing language in s. 775.21, F.S., the sexual predator section.
- Define “institution of higher education” and “change in enrollment or employment status.”
- Provide that sexual offenders who enroll at or are employed on a campus must register that information when employment is commenced and terminated. It also requires registration for any transfer between campuses of the same school.
- For predators and criminal justice agencies, clarify the initial registration and subsequent procedures for predators’ changes of address and name.
- Ensure transfer of registration information to the state sex offender registry and clarify responsibilities.
- Clarify the term “release” for the purpose of an exception from registration that was adopted in 2000, and that was initially intended to apply to situations involving “boyfriends/girlfriends” having “consensual sex” but in violation of Florida law.
- Clarify relief for sexual offenders who are required to register in another state and move to Florida (but who would not otherwise qualify as a sexual offender in Florida law). The language tracks s. 775.21, F.S.
- Add legislative findings that were adopted in 2000 but only appeared in chapter law (ch. 200-207, L.O.F.). This addition makes the findings accessible and visible in statute form. The findings were added as a result of dicta in a court case indicating that sexual offender designation was punitive because the sexual offender section did not have the same introductory legislative findings as in ch. 775, F.S., declaring the sexual predator designation to be a “status” and not a punishment.

The CS creates s. 943.0436, F.S. This new section is comparable to s. 775.24, F.S., which provides legislative findings relevant to the duty of the courts to uphold laws governing sexual

predator and offender registration, and provides that agencies may request relief from inappropriate orders affecting registration. According to FDLE, there have been numerous instances of assistant state attorneys and judges who are unaware of s. 775.24, F.S., as it applies to sexual offenders and have failed to follow the statute by waiving all or part of the sexual offender registration requirements. This new section is placed in the sexual offender chapter where it will be more accessible to those working sexual offender cases.

The CS amends s. 944.606, F.S. (sexual offenders being released from DOC incarceration) to add to the definition of “sexual offender” new criteria offenses created by the 2001 Florida Legislature: transmission of pornography by electronic device or equipment; and transmission of material harmful to a minor by electronic device or equipment.

The CS amends s. 944.607, F.S. (sexual offender under DOC supervision/probation) to:

- Clarify sexual offender obligations for offenders required to register in another state that move to Florida and are under supervision. The language tracks existing language in s. 775.21, F.S.
- Add to the definition of “sexual offender” new criteria offenses created by the 2001 Florida Legislature: transmission of pornography by electronic device or equipment; and transmission of material harmful to a minor by electronic device or equipment.
- Define “institution of higher education” and “change in enrollment or employment status.”
- Require sexual offenders under supervision who enroll at or are employed on a campus to register that information once commenced and upon termination. It also requires registration for any transfer between campuses of the same school.

The CS takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Sexual predator registration and notification laws have been found not to encroach on constitutional privacy interests, *Johnson v. State*, 2000 WL 1760181 (Fla. 5th DCA 2000); not to violate state constitutional due process rights, *id.*; and not to constitute double jeopardy, *Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998).

Retroactive application of the sexual predator registration and notification laws has been found not to constitute an ex post facto violation. See *Mendez v. State*, 2001 WL 314524*2 (Fla. 5th DCA 2001) (“ . . . [D]esignation as a sexual predator is ‘neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.’ *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997). Therefore, no ex post facto concerns exist that would prohibit applying the current statute to *Mendez*. *Rickman v. State*, 714 So.2d538 (Fla. 5th DCA 1998); *Doe v. Portiz*, 142 N.J. 1, 662 A.2d367 (N.J. 1995).”)

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.