

# 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 2054

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Sexual Offenders and Predators

DATE: April 19, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill amends laws requiring registration, and providing for public and community notification, of sexual predators and offenders to require that a person civilly committed as a sexually violent predator be designated as a sexual predator for registration and notification purposes by the court involved in the civil commitment.

The bill also provides registration requirements for sexual predators and sexual offenders who vacate a permanent residence and do not establish or maintain another residence. It is a second degree felony for a sexual predator or sexual offender to fail to report that he or she remains at a residence after he or she has reported vacating the residence.

The bill also amends the definition of “conviction” under the registration statutes to indicate that a conviction includes an entry of a guilty plea or a plea of nolo contendere resulting in a sanction.

The bill also indicates where venue may occur for the purpose of prosecuting violations of the registration laws, specifies what constitutes actual notice of the duty to register, requires registration of sexual predators or sexual offenders who are charged with failure to register and who assert a lack of notice of the duty to register, and precludes the defense of lack of notice of duty to register on a subsequent charge of failure to register. Additionally, the bill provides that registration following arrest, service, or arraignment is not a defense and does not relieve the sexual predator or sexual offender from criminal liability for failure to register.

This bill substantially amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., and reenacts ss. 39.806(1)(d), 63.089(4)(b), 63.092(3), 775.13(5), 775.24(2), 775.25, 775.261(3)(b), 921.0022(3)(f), 944.608(7), 943.0436(2), 944.609(4), and 947.1405(2)(c), F.S.

## II. Present Situation:

### Registration of Sexual Predators and Sexual Offenders

Florida's Sexual Predators Act, s. 775.21, F.S., provides that an offender shall be designated as a "sexual predator," if the defendant's current felony offense was committed on or after October 1, 1993, and the offense is any of the offenses specified in that section. The court sentencing the offender for an offense applicable to the sexual predator designation makes the designation subject to statutory procedures for making a written finding. There are also provisions for a court to designate as a sexual predator those persons who were administratively designated as sexual predators under former law or who meet the sexual predator criteria but have not been designated by a court as a sexual predator.

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 the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an FDLE office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for providing notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. The law directs how information collected by the DOC, the DHSMV, and others, is to be provided to FDLE. Extensive procedures are also provided for verification of sexual predator's addresses. *See* ss. 775.21, 943.043, 943.0435, 944.606, and 944.607, F.S.

A sexual predator's failure to comply with registration requirements is a third degree felony. s. 775.21, F.S.

Section 943.0435, F.S., requires a “sexual offender” (a person who has been convicted of any specified offense and who has been released on or after October 1, 1997, from the sanction imposed for any conviction of a specified offense) to report and register in a manner similar to the registration of a sexual predator under s. 775.21, F.S. There are also somewhat similar registration requirements for sexual offenders under the custody or control of the DOC, or under its supervision, or in custody of a private correctional facility. s. 944.607, F.S. Failure of a sexual offender (under s. 943.0435, F.S., or s. 944.607, F.S.) to comply with the registration requirements is a third degree felony.

Section 944.606, F.S., requires that the DOC provide certain information to the FDLE and others, as specified, regarding any sexual offender being released from incarceration.

### **Civil Commitment of Sexual Violent Predators**

Part V of ch. 394, F.S., provides that sexually violent predators may be subject to involuntary civil commitment. A sexually violent predator is a person convicted of a sexually violent offense who suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. s. 394.912, F.S. Procedures for identifying persons subject to the sexually violent predator criteria and civilly committing a person identified as a sexually violent predator are provided in ss. 394.913, F.S., et seq.

## **III. Effect of Proposed Changes:**

### **Civil Commitment**

The bill amends s. 775.21, F.S., to require that a person civilly committed as a sexually violent predator be designated as a sexual predator for registration purposes by the court involved in the civil commitment.

### **Duty to Register**

The bill amends s. 775.21 and s. 943.0435, F.S., to require sexual predators and sexual offenders who vacate a permanent residence and do not establish or maintain another residence to report to FDLE or the local sheriff where the person is located within 48 hours after vacating the residence and provide the date the residence was vacated, update registration information, and provide an address where the person will be during the time when no residence is established or maintained.

If the sexual predator or sexual offender remains at a permanent residence after having reported vacating the premises, he or she has to return to FDLE or the sheriff within 48 hours after the date he or she indicated the residence would be vacated and report that fact. Failure to make this report is a second degree felony. The offense is unranked so it defaults to a Level 4 ranking, which means the court could impose a sentence of imprisonment but is not required to do so.

**Conviction Defined**

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to modify the definition of “conviction” under the registration statutes to indicate that conviction includes an entry of a guilty plea or nolo contendere resulting in a sanction.

**Venue**

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to indicate where venue may occur for the purpose of prosecuting violations of the registration laws. Venue for the prosecution of a sexual predator or sexual offender for failure to register is in the county in which the person should have registered, the county in which the person was last registered, the county in which the person was convicted or designated as a sexual predator or offender.

**Notice**

The bill specifies in ss. 775.21(10)(e), 943.0435(9)(c), and 944.607(10)(c), F.S., that an arrest, service of an information or complaint, or arraignment for failure to register constitutes actual notice of the duty to register. The bill further provides in the paragraphs cited above that a sexual predator or offender who is charged with the crime of failure to register who asserts a lack of notice of the duty to register must immediately register or face a subsequent arrest for failure to register. In a subsequent charge for failure to register, the bill provides that a defense of lack of notice of the duty to register may not be asserted. In the next paragraphs, ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., the bill states:

Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

It is unclear to what arrest or which arrests “such arrest” refers. “Such arrest” could potentially refer to the first arrest in which a person is notified of a duty to register, the second arrest for failure to register after a person has been notified of the duty to register, or both arrests. As such, the bill does not clearly indicate whether a lack of notice of the duty to register is a defense against a charge of failure to register.

**Reenactment**

The bill also reenacts ss. 39.806(1)(d), 63.089(4)(b), 63.092(3), 775.13(5), 775.24(2), 775.25, 775.261(3)(b), 921.0022(3)(f), 944.608(7), 943.0436(2), 944.609(4), and 947.1405(2)(c), F.S., for the purpose of incorporating the amendments to statutes amended by the bill in reference to those statutes in the reenacted statutes or statutory provisions.

**Effective Date**

The bill provides an effective date of July 1, 2004.

**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:**

In *Lambert v. State*, 355 U.S. 225 (1957), the U.S. Supreme Court held that the Due Process Clause of the 14th Amendment to the U.S. Constitution requires

actual knowledge and subsequent failure to comply are necessary before a conviction under [an ordinance requiring the registration of felons] can stand.<sup>1</sup>

Additionally, in *State v. Giorgetti*, 2004 WL 396212 (Fla. 2004),<sup>2</sup> the Florida Supreme Court has read into ss. 943.0435 and 944.607(9), F.S., that knowledge of the duty to register is required “before a conviction under the sexual offender registration statutes can stand.”

The bill specifies in ss. 775.21(10)(e), 943.0435(9)(c), and 944.607(10)(c), F.S., that an arrest, service of an information or complaint, or arraignment for failure to register constitutes actual notice of the duty to register. The bill further provides in the paragraphs cited above that a sexual predator or offender who is charged with the crime of failure to register who asserts a lack of notice of the duty to register must immediately register or face a subsequent arrest for failure to register. In a subsequent charge for failure to register, the bill provides that a defense of lack of notice of the duty to register may not be asserted. In the next paragraphs, ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., the bill states:

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<sup>1</sup> *Lambert v. State*, 355 U.S. 225, 229 (1957).

<sup>2</sup> The opinion provides that it has not been released for publication in the permanent law reports and may be revised or withdrawn until it is released.

second arrest for failure to register after a person has been notified of the duty to register, or both arrests. As such, the bill does not clearly indicate whether a lack of notice of the duty to register is a defense against a charge of failure to register.

If the bill does not permit lack of knowledge as a defense to the first arrest for the failure of a sexual predator or offender to register, the bill is likely unconstitutional under *Lambert*. To avoid constitutional problems, the Legislature may wish to amend ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., to state:

Registration following a second charge for failure to register is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An estimate of the impact, if any, on FDLE and DOC of the provisions of the bill was not available at the time this analysis was completed.

**VI. Technical Deficiencies:**

See the Other Constitutional Issues section of this analysis.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.