

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 340

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Ring

SUBJECT: Sexual Offenders and Sexual Predators

DATE: April 23, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>WPSC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill encourages all public libraries to adopt an Internet safety education program that has been endorsed by a United States government-sanctioned law enforcement agency or other reputable organization. The purpose of the Internet safety education program is to promote the use of prudent online department and broaden awareness of online predators.

While the bill only encourages the libraries to adopt the program, the bill requires annual reporting by libraries on the number of users who complete the education. The bill also requires the Division of Library and Information Services to adopt rules that reward libraries in the program grant application process which have had 1 percent or more of their annual number of users complete the program. Beginning in the 2011-2012 fiscal year, 10 percent of the total points available in the library services and technology grant application evaluation process must be awarded to libraries that meet the 1-percent target.

The bill also requires sexual predators and sexual offenders required by law to register or re-register specified information to also provide their home telephone number and any cellular telephone number they may have as part of the registration or re-registration process. The failure to provide this required information is a third-degree felony.

The bill also provides that a person convicted of a violation of s. 847.0135(4), F.S., relating to traveling to meet a minor for the purpose of engaging in unlawful sexual activity, will be required to register as a sexual predator or offender.

The bill removes residency requirements for victims in current law relating to violations of the Computer Pornography and Child Exploitation Act and allows prosecution for transmission of harmful material to a minor by electronic device or equipment regardless of where the defendant and victim are located.

This bill substantially amends the following sections of the Florida Statutes: 257.12, 775.21, 847.0135, 847.0138, 943.0435, 944.606, 944.607, and 985.481.

II. Present Situation:

Public libraries/Internet Safety Education

The Florida Department of State, Division of Library and Information Services (division) is delegated responsibilities related to public libraries in the state. Section 257.031, F.S., provides for the appointment of the State Librarian. Duties of the State Librarian include serving as the director of the division and being responsible for performing functions assigned to it. One of the duties of the division is to establish reasonable operating procedures under which libraries will be eligible to receive state monies. The division is authorized to accept and administer appropriations for library program grants and to make such grants in accordance with the Florida long-range plan for library services.¹

Public libraries are not, at this time, required to provide a program of Internet safety education.

Under provisions of the federal Children's Internet and Protection Act (CIPA),² all public libraries that receive federal funds, either in the form of Library Services and Construction Act grant funds administered by the Division of Library and Information Services or in the form of financial support for Internet access and internal connections services from the Universal Service Fund (USF), must certify that they are enforcing a policy of Internet safety. That includes measures to block or filter Internet access for both minors and adults to certain visual depictions.

The CIPA also requires libraries to provide a technology protection measure that blocks or filters Internet access and protects against access by adults and minors to visual depictions that are obscene, considered child pornography, or – with respect to use of computers with Internet access by minors – harmful to minors. It may be disabled for adults engaged in bona fide research or other lawful purposes. According to the Florida Department of State, approximately 83 percent of public libraries in the state employ Internet filters and 100 percent of the public libraries have an Internet safety policy.

The Florida Department of Legal Affairs has a Child Predator CyberCrime Unit, which was established in 2005 to combat the threat of cybercrimes against children in our state. This unit

¹ Section 257.192, F.S.

² Pub. L. 106-554.

works to expand programs to further safeguard children from predators and includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children. In less than two years, the unit has facilitated the arrests of more than 50 individuals who created, possessed, or distributed child pornography, or who sexually solicited children online and traveled to meet them.³

Through the Child Predator CyberCrime Unit, the Attorney General cooperates with federal and state prosecutors, the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies. The Attorney General's Office is also prioritizing education and community outreach efforts to protect Florida's children, including a pilot program launched in Duval County to target teens and parents of young children with an educational direct mail campaign and a cybersafety program that is being presented to all middle and high school students in the state.⁴

In July 2007, the U.S. Senate Committee on Commerce, Science, and Transportation held hearings to review steps that Congress could take to protect children from online predators. As reported by the American Library Association Newsletter, one witness at the hearing, David Finkelhor, director of the University of New Hampshire's Crimes Against Children Research Center, provided the committee with the following statistics on Internet predation:

- Teenagers, not young children, are the predominant victims of online sex crimes.
- Some 80 percent of predators are "quite explicit about their sexual intentions" and do not resort to "posing online as other children in order to set up an abduction and an assault."
- The offenders spend weeks in explicit online conversations "that play on the teen's desires for romance, adventure, sexual information, and understanding."
- Half the victims are described by police as "being in love with or feeling close friendship with the offender."⁵

The Center for Democracy and Technology reports on its website that Internet Safety Education "... represents the brightest hope for protecting kids online."⁶

Sexual Predators and Sexual Offenders

The terms "sexual predator" and "sexual offender" are statutorily defined terms that are used in sections of the Florida Statutes that require persons who meet either definition to register and re-register, if applicable, certain information such as name, age, physical characteristics, and residence address with law enforcement agencies in the manner specified by those sections and meet other requirements of those sections.

The Florida Department of Law Enforcement (FDLE) states:

³ Florida Attorney General Bill McCollum, *Child Predator CyberCrime Unit*, available at <http://myfloridalegal.com/pages.nsf/Main/DF75DF6F54BDA68E8525727B00645478> (last visited Apr. 16, 2009).

⁴ *Id.*

⁵ American Library Association, *Senators Hear Arguments for Internet Safety Education*, available at <http://www.ala.org/ala/online/currentnews/newsarchive/2007/july2007/senatehearings.cfm> (last visited Apr. 15, 2009).

⁶ Sophia Cope, *Internet Safety Education May Be Catching On in Congress* (Aug. 13, 2007), available at <http://blog.cdt.org/2007/08/13/internet-safety-education-may-be-catching-on-in-congress/> (last visited Apr. 15, 2009).

Currently, the registry collects phone numbers from sexual offenders/predators during the electronic registration/reregistration process.⁷ However, the reporting of such information by offenders/predators to law enforcement during registration/reregistration is not required by current Florida law, and therefore there is no penalty for failure to provide such information.⁸ The Department of Corrections often currently provides the sex offender registry with phone number information of those being released, however, current Florida law does not require that this information be reported to the registry, nor does it specify that all such numbers must be provided to the registry by the registrant, Department of Corrections, Department of Juvenile Justice, or the Department of Highway Safety and Motor Vehicles.⁹

FDLE staff also notes that one of the requirements of the federal Adam Walsh Child Protection and Safety Act of 2006¹⁰ “is to specifically collect this information from registrants during registration processes.”¹¹

Some of the registration information appears on a public Internet website maintained by the Florida Department of Law Enforcement (FDLE).¹² The FDLE is authorized to notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure.¹³ The FDLE does not post on the Internet all public records information it receives (e.g., home telephone numbers are not posted), but this information could be obtained through a public records request.

A “sexual predator” is designated as such by a court. This generally occurs upon conviction for a specified or described “current offense” or such current offense coupled with a specified or described prior offense. The current offense must have been committed on or after October 1, 1993. In some cases, a person has been designated improperly as a sexual predator (e.g., the person was designated without a court finding). In these cases, the state attorney is required to bring the matter to the court’s attention in order to establish that the offender meets the criteria for designation as a sexual predator, and if the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator. Finally, an offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under ch. 394, F.S., must be designated by a court as a sexual predator.¹⁴

⁷ The FDLE collects this information pursuant to provisions of the laws that allow for collection of other information the department deems necessary. E-mail from Fern Rosenwasser, Florida Department of Law Enforcement, to legislative staff, dated March 12, 2009, noting ss. 775.21(6) and 943.0435(3)(c), F.S.

⁸ “Because phone numbers are not per se in the statute, a person is not on notice that failure to provide a number would constitute a felony.” *Id.*

⁹ Florida Department of Law Enforcement, *Analysis of SB 340* (Feb. 18, 2009).

¹⁰ See Pub. L. No. 109-248, 120 Stat 587 (2007).

¹¹ E-mail from Mary Coffee, Florida Department of Law Enforcement, to legislative staff, dated March 13, 2009.

¹² See The Florida Department of Law Enforcement, Florida Sexual Offenders and Predators Website, *available at* <http://offender.fdle.state.fl.us/offender/homepage>.

¹³ See s. 943.043(1), F.S.

¹⁴ See s. 775.21, F.S. All information in this paragraph is from this statute.

Section 775.21, F.S., describes the requirements for sexual predator registration and re-registration. Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. In contrast, the notification requirement is discretionary regarding community and public notification of the presence of sexual offenders. There are also other distinctions between sexual predators and sexual offenders. For example, some sexual predators may not work for compensation or as a volunteer at any place where children regularly congregate.

A sexual offender is a person who falls into any of the following categories:

- The person was convicted of any offense specified or described in s. 943.0435(1)(a)1.a.(I), F.S., and has been released on or after October 1, 1997, from the sanction imposed for that conviction.¹⁵
- The person establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction and was, as a result that designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.¹⁶
- The person establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for any offense specified or described in paragraph (1)(c).¹⁷
- On or after July 1, 2007, the person was adjudicated delinquent for an offense specified or described in paragraph (1)(d) when the juvenile was 14 years of age or older at the time of the offense. This paragraph also requires the court to make specific written findings.¹⁸
- A person, on or after October 1, 1997, is in the custody or control of, or under the supervision of, the Florida Department of Corrections (DOC) or is in the custody of a private correctional facility, as a result of a conviction for any offense specified or described in subparagraph (1)(a)1.¹⁹
- The person establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state, but has been designated as a sexual predator, a sexually violent predator, or another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.²⁰

¹⁵ Section 943.0345(1)(a)1.a.(I) and (II), F.S.

¹⁶ Section 943.0345(1)(b), F.S.

¹⁷ Section 943.0345(1)(c), F.S.

¹⁸ Section 943.0345(1)(d), F.S.

¹⁹ Section 944.607(1)(a)1., F.S.

²⁰ Section 944.607(1)(a)2., F.S. Sections 943.0435 and 944.607, F.S., are linked because there is some cross-over between the two statutes. For example, a person may be under DOC supervision but not incarcerated, in which case the person is subject to some of the registration requirements in s. 943.0435, F.S., but is also subject to re-registration requirements in s. 944.607, F.S. If the person is incarcerated (DOC, private correctional facility, or local jail), the custodial agency or entity provides the

- The person is in the care or custody or under the jurisdiction or supervision of the Department of Juvenile Justice (DJJ) or is in the custody of a private correctional facility and has been adjudicated delinquent as provided in s. 943.0435(1)(a)1.d., F.S.²¹
- The person is in the care or custody or under the jurisdiction or supervision of the DJJ or is in the custody of a private correctional facility and establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.²²

Computer Pornography and Child Exploitation Prevention Act

The Computer Pornography and Child Exploitation Prevention Act (Act) currently prohibits a person from using a computer to sell, receive, exchange, or disseminate any information relating to a minor for the purposes of accomplishing sexual acts with a minor.²³ The Act also prohibits the use of computer services for the purpose of soliciting a child to commit a sexual act.²⁴ Under the Act, a person is also prohibited from using a computer to facilitate travel to meet with a minor for sexual activity.²⁵ In addition, a person is prohibited from engaging in certain sexual conduct live on a computer online service if the person knows or should know or have reason to believe that the transmission will be viewed by a victim 16 years of age or younger.²⁶

The Act specifies that a person is subject to prosecution in this state for any conduct proscribed by the Act, while either within or outside of the state, if the act involves a child residing in this state, a child's guardian, or another person believed by the person to be a child or the child's guardian residing in this state.²⁷ Similarly, relating to the provision barring live sexual conduct on a computer online service, the Act expressly requires that the victim be located in this state.²⁸

registration information. Section 944.606, F.S., requires the DOC to provide certain information to the FDLE regarding any sexual offender released after serving a period of incarceration for any offense.

²¹ Section 985.4815(1)(d)1., F.S. Sections 755.21, 943.0435 and 985.4815, F.S., are linked because there is some cross-over between the three statutes. For example, a person may be under the care, jurisdiction, or supervision of the DJJ but not incarcerated, in which case the person is subject to some of the registration requirements in s. 775.21, F.S., (if the person is a sexual predator) or s. 943.0435, F.S., but is also subject to some registration requirements and re-registration requirements in s. 985.4815, F.S. The DJJ must provide certain information to the FDLE regarding the person under DJJ's care, custody, jurisdiction, or supervision. Section 985.481, F.S., requires the DJJ to provide certain information to the FDLE on a person who has been adjudicated delinquent as provided in s. 943.0435(1)(a)1.d., F.S., and is being released after serving a period of residential commitment under the department for any offense.

²² Section 985.4815(1)(d)2., F.S.

²³ Section 847.0135(2), F.S.

²⁴ Section 847.0135(3), F.S.

²⁵ Section 847.0135(4), F.S.

²⁶ Section 847.0135(5), F.S.

²⁷ Section 847.0135(7), F.S.

²⁸ Section 847.0135(5), F.S.

Transmission of Material Harmful to Minors

Existing law provides that a person located in this state or another jurisdiction who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the person to be a minor, commits a third-degree felony.²⁹ However, this provision requires that the minor be located in this state.

III. Effect of Proposed Changes:

Internet Safety Education Program

The bill amends s. 257.12, F.S., to encourage all public libraries to adopt an Internet safety education program, including the implementation of a computer-based educational program, which has been endorsed by a United States government-sanctioned law enforcement agency or other reputable organization, and is designed for children and adults. The program must be interactive and age-appropriate.

The purpose of the Internet safety education program is to promote the use of prudent online deportment and broaden awareness of online predators.

Each library is required to annually report to the Division of Library and Information Services (division) the annual number of users who complete the education program.

The division is required to adopt rules for the program grant application process to reward libraries that have had 1 percent or more of their annual number of users complete the education program adopted by the library. The number of users is based on the total number of registered borrowers from the preceding year. Users who complete the educational program as a result of collaboration between the library and other entities are to be included in the library's annual report and the total number of program completers. The rules must allocate 10 percent of the total points that are available in the library services and technology grant application evaluation process to public libraries that are in compliance with the section, beginning with the grant application cycle for the 2011-12 fiscal year.

Registration of Telephone Numbers by Sexual Predators

The bill also amends s. 775.21, F.S., to require sexual predators to register their home phone number and any cellular phone number with the Florida Department of Law Enforcement (FDLE). By listing this information in the provisions relating to required registration

²⁹ Section 847.0138, F.S. "Harmful to minors" is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominately appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

information, the failure to provide such numbers is subject to the current third-degree felony penalty for failure to register required information.

Registration of Telephone Numbers by Sexual Offenders

The bill also amends ss. 943.0435, 944.606, and 985.481, F.S., to require sexual offenders subject to registration under those sections to register their home phone number and any cellular phone numbers with the FDLE. By listing this information in the provisions relating to required registration information, the failure to provide such numbers is subject to the current third-degree felony penalty for failure to register required information.

Registration Requirements for Persons Convicted of Traveling to Meet a Minor

The bill also amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to correct a reference in order to require those convicted of a violation of s. 847.0135(4), F.S., to register. During the 2007 session, s. 847.0135, F.S., was amended to make it a crime to travel to meet a minor for the purpose of engaging in unlawful sexual activity.³⁰ This offense was made subsection (4). The sexual predator and sexual offender statutes at that time specifically excluded subsection (4) from the requirement to register because previous subsection (4) did not contain a felony offense for which a person would be required to register. The bill moved the language that had previously been in subsection (4) to subsection (6). However, the sexual predator and sexual offender statutes were not amended at the time to change the exception from subsection (4) to subsection (6). As a result, people who travel to meet a minor for the purpose of engaging in unlawful sexual activity (and do not commit any other qualifying offense) are currently not required to register as a sexual predator or offender. The bill would change the reference and require those who travel to meet a minor for the purpose of engaging in unlawful sexual activity to register as a sexual predator or sexual offender.

Computer Pornography & Child Exploitation Prevention Act

Under the bill, subsections (5) and (7) of s. 847.0135, F.S., are amended to remove the requirements that a minor victim or minor's guardian reside in this state in order for a defendant to be prosecuted under the Computer Pornography and Child Exploitation Prevention Act (Act). Thus, a defendant may be prosecuted under the Act regardless of where the minor victim or guardian is located. However, the revision creates the suggestion that if a person engages in prohibited conduct outside this state, and the victim or the victim's guardian also resides outside this state, the person may nonetheless be subject to prosecution despite the lack of any nexus with Florida.

Transmitting Harmful Materials to Minors

The bill eliminates the requirement that a defendant who transmits an image, information, or data that is harmful to minor, in violation of s. 847.0138(2), F.S., be located in this state, in addition to eliminating the requirement that the minor be located in this state. However, in effect, it appears that a person who is not located in Florida who transmits harmful material to a minor not

³⁰ Chapter 2007-143, Laws of Fla.

located in this state would be subject to criminal prosecution in Florida, even without any other nexus to this state. In addition, the bill provides that a person located in another jurisdiction who transmits harmful material in violation of s. 847.0138(3), F.S., to a minor not located in this state is subject to prosecution. This provision appears to be superfluous to subsection (2) as amended by the bill.

Effective Date

The bill takes effect on October 1, 2009.

Other Potential Implications:

As previously noted, the FDLE already collects the phone numbers required to be collected by the bill. It does this currently under an “other information” catch-all provision. The bill specifically includes the numbers in the list of required registration information. Under current law, the FDLE is not prohibited from posting this information on the Internet, but it does not do so. Even if the bill specifically prohibited the posting of the numbers on the Internet, the numbers would still be available pursuant to a public records request.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While the bill only encourages the libraries to adopt the program, the annual reporting requirement will have associated costs such as recording data, compiling statistics, and preparation of the report.

Costs for an Internet safety program that meets the requirements of the bill are unknown. A free program is available from at least one reputable public safety advocacy organization, and commercial programs are also available. The commercial programs require registration to obtain pricing information. Costs may be incurred for training librarians to teach the program, as well as costs for training users in the program.

The Division of Library and Information Services (division) will incur some minimal costs associated with rulemaking. Costs will also be incurred for updating grants criteria. Additional costs will be incurred by the division for reviewing annual reports by libraries on the number of users who have completed the Internet safety program.

The Florida Department of Law Enforcement (FDLE) has indicated that this bill will have a \$50,150 non-recurring impact for FY 2009-10.³¹ This will include the costs of mailing notification to sexual predators and sexual offenders (\$37,800) as well as system programming and maintenance (\$12,350).³²

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates the bill will have an insignificant prison bed impact. This estimate does not include the removal of the residency restrictions under the Computer Pornography and Child Exploitation Prevention Act, as well as the changes to the statute governing the transfer of harmful materials to a minor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There appear to be a number of entities that provide Internet safety education programs.

It is not clear how libraries will be able to determine the number of program participants who have completed the program as a result of strategic partnerships or collaboration between the library and other entities.

³¹ Florida Department of Law Enforcement, *Analysis of SB 340* (Feb. 18, 2009). All information in this paragraph is from this source.

³² The FDLE states:

In the 2008 Legislative session, FDLE provided a fiscal analysis indicating that this enhancement programming could be subsumed in the current operational budget (requiring no additional fiscal impact). Since that time, FDLE programming staff has been reduced significantly by Legislature and Federal funding cuts. The remaining staff has been assigned to maintain – and ensure operation – of all critical FDLE and statewide systems. Current programming staff levels are barely sufficient to maintain the operation of existing systems – there are no resources available to perform new or enhancement programming. Passage of this bill necessitates additional funding for staff-augmentation programming for this system change.

Id.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 21, 2009:

The committee substitute:

- Removes the requirements in statute that a minor victim or minor's guardian reside in this state in order for a defendant to be prosecuted under the Computer Pornography and Child Exploitation Prevention Act (Act); and
- Allows prosecution for transmission of harmful material to a minor by electronic device or equipment regardless of where the defendant and victim are located.

CS by Criminal Justice on April 1, 2009:

The committee substitute:

- Encourages public libraries to adopt an Internet safety education program, as defined.
- Provides that by April 1, 2010, the Division of Library and Information Services (division) is required to adopt rules for rewarding libraries in the program grant application process which have had 1 percent or more of their annual number of program participants complete the Internet safety education program.
- Requires the division to allocate 10 percent of the total points available in the library services and technology grant application evaluation process to public libraries in compliance with this section, beginning with the grant application cycle for the 2011-2012 fiscal year.
- Provides that a person who has been convicted of a violation of s. 847.0135(4), F.S., relating to traveling to meet a minor for the purpose of engaging in unlawful sexual activity will be required to register as a sexual predator or offender.

- B. **Amendments:**

None.