

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 Committee on Appropriations

BILL: CS/SB 528

INTRODUCER: Judiciary Committee and Senator Evers

SUBJECT: Sex Offenses

DATE: February 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Pre-Meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 528 makes numerous changes to Florida laws relevant to persons required to register as a sexual predator or sexual offender (“registrant”). Registration of such individuals provides notice to the public and assists law enforcement personnel in monitoring the activities of sexual predators and sexual offenders. A significant change in the bill is an increase in the information a registrant must report to the Florida Department of Law Enforcement (FDLE). This additional information includes information on vehicles a registrant owns and vehicles owned by a person residing with the registrant.

The bill does the following:

- Creates a process for relevant agencies to be notified of an order granting a registrant’s name change petition and informing the FDLE and applicable law enforcement agencies when a registrant whose name was legally changed fails to meet requirements for obtaining a replacement driver license or identification card;
- Requires a registrant to report specified information on vehicles the registrant owns and vehicles owned by a person who resides with the registrant, Internet identifiers (prior to their use), palm prints, passports, professional license information, immigration status information, and volunteer status at a Florida institution of higher education;
- Prohibits the FDLE from posting information regarding a non-registrant’s vehicles on the Internet public registry of sexual predators and sexual offenders;

- Specifies additional “sexual misconduct” offenses to criteria or definitions that qualify a person as a sexual predator or offender;
- Requires registrants who are unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles (DHSMV) to report any change of residence or change of name within 48 hours after the change;
- Requires registrants to report information regarding their intention to establish a residence in another country (or intention to remain in Florida after previously reporting an intention to reside in another country);
- Punishes registrants who fail to report Internet identifiers prior to use and registrants who knowingly provide false registration information; and
- Modifies provisions relevant to seeking removal of registration requirements to allow for additional sexual offenders to petition for registration removal if criteria are met.

The Criminal Justice Estimating Conference has determined that SB 528 will have an insignificant impact on the prison bed population. The Office of the State Courts Administrator projects that the bill will have a minimal impact on state courts system expenditures. The Florida Department of Law Enforcement indicates that it can make the basic changes to the registry required by the bill within existing resources.

II. Present Situation:

Registration of Sexual Predators and Sexual Offenders: General Information

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders, span several different chapters and numerous statutes,¹ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.²

The FDLE classifies a person as a sexual offender if the person:

¹ See ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

² Section 775.21, F.S. (the Florida Sexual Predators Act).

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.³

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders but frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ. The DOC and DJJ are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.⁴ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.⁵

Florida's registry laws meet minimum federal requirements. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),⁶ attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress has judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.⁷ States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented SORNA.⁸ Florida was the third state to do so.⁹

³ Section 943.0435 and 985.4815, F.S.

⁴ The FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. Florida Department of Law Enforcement, *About Us*, <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on January 15, 2014).

⁵ Link to the state public registry webpage: <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWASHTSbLUQVw> (last visited on January 15, 2014).

⁶ P.L. 109-248 (July 27, 2006).

⁷ United States Department of Justice, Dru Sjodin National Sex Offender Public Website, <http://www.nsopw.gov/Core/Portal.aspx> (last visited on January 15, 2014).

⁸ This standard is satisfied if a jurisdiction carries out SORNA requirements (as interpreted and explained by DOJ guidelines). Substantial implementation does not necessarily mean full implementation. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, "Jurisdictions that have substantially implemented SORNA," http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on January 15, 2014).

⁹ See Florida Department of Law Enforcement, Press Release, "Governor Crist Announces Florida's Implementation of the Adam Walsh Act" (May 18, 2010), <http://www.fdle.state.fl.us/Content/News/2010/May-2010/Governor-Crist-Announces-Florida%E2%80%99s-Implementation-.aspx> (last visited on January 15, 2014).

Registration and Reregistration Requirements

Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is under DOC or DJJ custody or supervision, under the custody of a private correctional facility, under the custody of a local jail, under federal supervision, or under none of these custody or supervision statuses. In describing the registration and registration process, this analysis focuses on the registrant who is in none of these custody or supervision statuses and resides in Florida. However, staff notes that any registrant released from custody without a subsequent period of supervision would be subject to this process, and registrants under DOC or DJJ supervision would be subject to a registration and reregistration process substantially similar to the process described.

A registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).¹⁰

At this initial registration, registrants must provide:

- Specified personal identification information;
- A social security number;
- an address and telephone numbers (home and cellular);
- A photograph and fingerprints;
- An electronic mail address and any instant message name;
- An occupation and place of employment; and
- A date and place of each conviction and a brief description of the crime or crimes committed.¹¹

After initial reporting, registrants must report in person to a driver license office and provide proof of initial registration to secure or renew a driver license or identification card. Each time the registrant's driver license or identification is subject to renewal, and within 48 hours after any change in residence or the registrant's name, the registrant must report in person to the driver license office.¹²

All sexual predators and some sexual offenders are required to reregister with their local sheriff four times a year. All other sexual offenders are required to reregister at least twice a year.¹³ Additionally, the following events are subject to expedited reporting to the sheriff:

¹⁰ Sections 775.21(6)(e) and 943.0435(2)(a), F.S.

¹¹ Sections 775.21(6)(a) and (e) and 943.0435(2)(a) and (b), F.S.

¹² Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

¹³ Sections 775.21(8) and 943.0435(14), F.S.

- Enrolling, obtaining employment, or carrying on a vocation at a Florida institution of higher education (including changes to this information);
- Electronic mail address and instant message names prior to their use;
- Vacating a residence without having another residence;
- Remaining at a residence the registrant has reported he or she will vacate;
- Intending to reside in another state or non-Florida jurisdiction;
- Remaining in Florida after reporting the intent to establish a residence in another state or non-Florida jurisdiction; and
- Living in another state but working or attending school in Florida.¹⁴

Agency Reporting of Information Regarding Sexual Predators and Sexual Offenders

The DOC must report to the FDLE certain personal information regarding a sexual offender who is:

- Released after serving a period of incarceration; or
- Taken in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.¹⁵

The DJJ must report to the FDLE certain personal information regarding a sexual offender who is:

- Released from DJJ residential commitment; or
- Supervised under DJJ but who is not committed.¹⁶

Prohibitions and Penalties

Certain sexual predators are prohibited from working or volunteering at places where children regularly congregate. A violation of this prohibition is a third degree felony.¹⁷

It is a second degree felony for a registrant to report that he or she intends to or did vacate a residence but remains at the residence without reporting this information.¹⁸

It is a third degree felony for a registrant to fail to report his or her intent to establish a residence in another state or jurisdiction.¹⁹ It is a second degree felony for a registrant to report his or her intent to establish a residence in another state or jurisdiction but remain in this state without reporting that information.²⁰

¹⁴ Sections 775.21(6)(g)2.-4., (i), and (j) and 943.0435(2)(b)2. and (4)(b)-(d), (7), and (8), F.S.

¹⁵ Sections 944.606 and 944.607, F.S.

¹⁶ Sections 985.481 and 985.4815, F.S.

¹⁷ Section 775.21(10)(b), F.S.

¹⁸ Sections 775.21(6)(g)3. and 943.0435(4)(c), F.S.

¹⁹ Sections 775.21(6)(i) and (10)(a) and 943.0435(7) and (9)(a), F.S.

²⁰ Sections 775.21(6)(j) and 943.0435(8), F.S.

It is a third degree felony for a registrant to fail to comply with registration requirements.²¹

Removal of Registration Requirement

Generally, sexual predators and sexual offenders are subject to lifetime registration, unless they receive a full pardon or have a conviction set aside for a registration-qualifying offense.²² However, some sexual offenders may petition under s. 943.0435, F.S., for removal of registration requirements if they have been released from the latest sanction for at least 25 years, are arrest-free since release, and do not have an adult conviction for a disqualifying offense.²³

Additionally, a small number of registrants who were teenagers or young adults when they committed their offense may qualify for registration removal pursuant to s. 943.04354, F.S. (which is sometimes referred to as the “Romeo and Juliet” statute). A sexual predator or sexual offender who qualifies under the statute may move or petition for removal of registration requirements. Qualifying criteria include:

- Commission of a qualifying sex offense; and
- Registration by the offender is based solely on that offense.

Additionally, the registrant seeking removal from the registration requirements must not be more than 4 years older than the victim of the qualifying offense. The victim must be 14-17 years of age when that offense was committed.

The court may grant the motion or petition if it finds that these criteria are met and registration removal will not conflict with federal law.²⁴

Name Changes

Section 68.07, F.S., provides that chancery courts have jurisdiction to change the name of any person residing in Florida on petition of the person filed in the county in which he or she resides.²⁵ A sexual predator or sexual offender registrant is not barred from changing his or her name but must report to a driver license office within 48 hours after any change in the registrant’s name by reason of marriage or the legal process.²⁶

Before the court hearing on a petition for a name change, a petitioner must have fingerprints submitted for a state and national criminal history records check, except if a former name is

²¹ Sections 775.21(10)(a), 943.0435(9)(a) and (14)(c)4., 944.607(10)(a) and (13)(c)4., and 985.4815(9), (10)(a), and (13)(b)4., F.S.

²² Sections 775.21(6)(l) and 943.0435(11), F.S.

²³ Section 943.0435(11), F.S.

²⁴ Federal conflict may occur if the sex offense doesn’t fall within a “consensual sexual conduct” exception to SORNA’s registration requirements. SORNA does not require registration if two persons 13 years of age or older engage in consensual sexual conduct and no more than 4 years separates their ages. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, *SORNA*, <http://www.ojp.usdoj.gov/10000000000smart/sorna.htm#consensualconduct> (last visited on January 15, 2014).

²⁵ Section 68.07, F.S., does not apply to any change of name in proceedings for dissolution of marriage or for adoption of children. Section 68.07(9), F.S.

²⁶ Sections 775.21(6)(g) and 943.0435(4)(a), F.S.

being restored. Fingerprints for the petitioner must be taken in a manner approved by the FDLE and must be submitted electronically to the FDLE for state processing for a criminal history records check. The FDLE submits the fingerprints to the Federal Bureau of Investigation for national processing and then submits the results of the state and national records check to the clerk of the court. Currently, the results of the criminal history records check do not specifically alert the clerk or judge that the petitioner is a registrant. The court is required to consider the results in reviewing the information contained in the petition and evaluating whether to grant the petition.

Each name change petition must be verified and show information specified in the statute, such as information that the petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.²⁷ The statute does not currently require a petitioner include information about whether the petitioner has ever been required to register as a sexual predator or sexual offender.²⁸

The hearing on a petition for restoring a former name may be held immediately after it is filed.²⁹ The hearing on any other petition for a name change may be held immediately after the clerk receives the results of the criminal history records check.³⁰

Upon filing the final judgment, the clerk of the court, if the petitioner's birth occurred in Florida, sends a report of the judgment and other specified information to the Office of Vital Statistics of the Department of Health and a report of the judgment to the FDLE. The FDLE sends a copy of the report to the DHSMV, which may be delivered by electronic transmission.³¹ The report must contain sufficient information to identify the petitioner, including the results of the criminal history records check if applicable, the new name of the petitioner, and the file number of the judgment.³² Any information retained by the FDLE and the DHSMV may be revised or supplemented by those departments to reflect changes made by the final judgment.³³ With respect to a person convicted of a felony in another state or of a federal offense, the FDLE must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation.³⁴ The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information related to the petitioner.³⁵

III. Effect of Proposed Changes:

The bill makes numerous changes to Florida laws relevant to persons required to register as a sexual predator or sexual offender ("registrant"), including, but not limited to, adding additional information that must be provided by a registrant, adding additional offenses that qualify an

²⁷ Section 68.07(3)(a), F.S.

²⁸ See s. 68.07, F.S.

²⁹ Section 68.07(4), F.S.

³⁰ *Id.*

³¹ The statute does not provide any specific direction on what the DHSMV is supposed to do with the name change information. Section 68.07(6), F.S.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

offender for registration, punishing noncompliance with registration requirements, and modifying the process for seeking removal of registration requirements.

Addresses Reporting of Legal Name Changes by Registrants (Section 1)

The bill amends s. 68.07, F.S., relating to legal name changes, to require the FDLE to inform the clerk of the court if a person petitioning for a name change is a registrant. Further, the name change petition must show whether the petitioner has ever been a registrant.

Within 5 business days after the filing of a final judgment on a name change, the clerk of the court must send a report of the judgment to the FDLE. However, if the petitioner is a registrant, the clerk must electronically notify the FDLE of the name change, in a manner prescribed by the FDLE, within 2 business days after the filing of the final judgment.

The bill requires the DHSMV to monitor the records of those registrants who the FDLE has notified the DHSMV have been granted a legal name change. If a registrant granted a legal name change does not obtain a replacement driver license or identification card within 48 hours after the name change, the DHSMV must notify the FDLE, which must notify applicable law enforcement agencies of the sexual predator's or sexual offender's failure to comply with the registration requirements.

Adds Registration-Qualifying Offenses to the Sexual Predator Statute and Quarterly Reporting Provisions (Sections 2, 4, and 8)

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to expand registration-qualifying offenses to include:

- Sexual misconduct between an employee of the Agency for Persons with Disabilities (APD) (or another covered person) and an individual with a developmental disability;³⁶
- Sexual misconduct between a DCF employee (or other specified employee) and a patient;³⁷
- Sexual misconduct between an APD/DCF employee (or another covered person) and a forensic client; and³⁸
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.³⁹

The bill clarifies that lawful conduct by owners and operators of computer services is not included within the registration-qualifying offenses relating to the use of a computer for child pornography or for facilitating the commission of other sexual offenses.

The bill clarifies that the existing reference to s. 847.0135, F.S., (computer-pornography and related computer offenses) contained in the list of registration-qualifying offenses in s. 775.21,

³⁶ Section 393.135(2), F.S.

³⁷ Section 394.4593(2), F.S.

³⁸ Section 916.1075(2), F.S.

³⁹ Section 825.1025, F.S. Only added for sexual predators under s. 775.21, F.S.

F.S., excludes s. 847.136(6), which relates to owners and operators of computer services, and is not a relevant offense for purposes of the sexual predator designation.⁴⁰

The bill also amends the list of offenses in ss. 943.0435 and 944.607, F.S., for which quarterly registration requirements apply. Currently, under s. 944.607(13)(b)6., F.S., a sexual offender is subject to quarterly registration requirements if a court finds that the offender molested a person through the use of “unclothed genitals or genital area.” The bill limits this quarterly reporting requirement to those who also used “force or coercion” in committing the offense.

The bill also amends the list of offenses in ss. 943.0435 and 944.607, F.S., for which quarterly registration requirements apply to include a violation of a similar offense committed in Florida which has been redesignated from a former statute number to one of those currently listed.

Adds Information Registrants Must Report (Sections 2, 4, 8 and 9)

The bill amends ss. 775.21, 943.0435, 944.607, and 985.481, F.S., to require registrants to provide additional information as part of the registration or reregistration process, including:

- The make, model, color, vehicle identification number (VIN), and license tag number of all vehicles that are owned by the registrant and all vehicles that are owned by a person who resides with the registrant;
- Internet identifiers (prior to their use);
- Palm prints;
- Passports;
- Professional license information;
- Immigration status information; and
- Volunteer status at a Florida institution of higher education.

For the purpose of the vehicle information reporting requirement, a person is residing at the registrant’s residence if the person abides, lodges, or resides at the residence for 5 or more consecutive days. The bill also defines the term “vehicles owned” as any motor vehicle defined in s. 320.01, F.S., that is registered, co-registered, leased, titled, or rented by a person; a rented vehicle that the person is authorized to drive; or a vehicle for which the person is insured as a driver.

The bill amends s. 943.043, F.S., to prohibit the FDLE from displaying on or disseminating through the Internet public registry maintained by the FDLE any information regarding a vehicle that is owned by a person who is not required to register as a sexual predator or sexual offender.

⁴⁰ According to the FDLE, “[t]his language insures compliance with federal requirements relating to registration of those convicted of and (sic) computer pornography solicitation, advertisement, luring, seducing or traveling to meet a minor etc. who also have a prior conviction for a sexual offense. Correspondence from FDLE staff to the staff of the Senate Committee on Criminal Justice, dated January 16, 2014 (on file with the Senate Judiciary Committee).

Requires Registrants Who Fail to Procure a Driver License/State ID to Report Information (Sections 2 and 4)

The bill amends ss. 775.21 and 943.0435, F.S., to require registrants who fail to secure or update a driver license or identification card with the DHSMV to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change. This information is reported to the sheriff's office in the county where the registrant resides or is located and the information must include a confirmation that the registrant reported the information to the DHSMV.

Requires Registrants Intending to Reside in Another Country to Report Information (Sections 2 and 4)

The bill amends ss. 775.21 and 943.0435, F.S., to require registrants who intend to establish a residence in another country to report in person to the sheriff of the county of current residence within 21 days before their planned departure date. When reporting, the registrant must provide the country and address of the intended residence. A residence outside of the country is a permanent residence if the registrant intends to be there for 5 days or more. Further, registrants who remain in Florida after previously reporting an intent to reside in another country must report their intent to remain in Florida to the sheriff who received the previous report. This reporting must occur within 48 hours after the date the registrant indicated he or she would leave Florida.

Prohibits and Punishes Certain Acts (Sections 2, 4, 8, 10, and 11)

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to provide that it is:

- A second degree felony for a registrant who reports his or her intent to establish a residence in another country to remain in Florida without reporting to the sheriff this information;
- A third degree felony to fail to report all required Internet identifiers before use; and
- A third degree felony to knowingly provide false registration information by act or omission.

The bill amends s. 921.0022, F.S., to update descriptive language in the offense severity ranking chart of the Criminal Punishment Code⁴¹ to reflect these changes.

Reporting of Internet Identifiers to Commercial Social Networking Websites (Section 6)

The bill amends s. 943.0437, F.S., to authorize the FDLE to provide information on Internet identifiers⁴² maintained as part of the registry to commercial social networking websites or third parties designated by those websites. This information may be used by those websites to

⁴¹ Under the Criminal Punishment Code, the sentencing judge must first consult the offense severity ranking chart to determine the ranking of the offenses before him or her. The sentencing judge must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. Section 921.022, F.S., and Fla. R. Crim. P. 3.704(c). The judge must then determine the permissible range of sentence using a scoresheet. *Id.*

⁴² The bill replaces the term "instant message name" with "Internet identifier." The new term includes all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication. See s. 775.21(2)(i), F.S., as revised in the bill.

compare registered users and screen potential users of the websites. The websites are not subject to civil liability for any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an Internet identifier contained in the registry.

Reporting of Sexual Offender Information to the FDLE (Sections 7 and 9)

The bill amends ss. 944.606 and 985.481, F.S., which require the DOC and the DJJ to notify the FDLE of certain information regarding released sexual offenders, to:

- Expand the number of qualifying offenses to include the previously mentioned “sexual misconduct” offenses to the definition of “sexual offender” in that statute; and
- Require the DOC and the DJJ to report palm prints; Internet identifiers; professional licenses, if known; passport information; and immigration status information.⁴³

Allows Additional Sexual Offenders to Petition for Registration Removal if Criteria are Met (Sections 4 and 5)

The bill revises criteria in s. 943.0435, F.S., for a person to become eligible for registration removal. In some cases, the bill reduces the time period to 15 years from 25 years that a registered person must remain registered before becoming eligible for registration removal. Under existing law, a registrant must be arrest free for 25 years before becoming eligible for registration removal. Under the bill, a person will remain eligible for registration removal despite misdemeanor convictions during the applicable time period.

Petition for Registration Removal after 25 Years

The bill authorizes a sexual offender to petition for removal of registration requirements⁴⁴ if 25 years have elapsed since the beginning of the registration period for the most recent registration-qualifying conviction or juvenile adjudication⁴⁵ and:

- During the 25 years preceding the petition, the sexual offender has not been convicted or adjudicated delinquent of a felony of a felony offense or an offense punishable by more than 1-year of imprisonment;⁴⁶
- Registration was not based upon an adult conviction for an offense for which registration removal is prohibited;⁴⁷ and

⁴³ The DJJ must also report vehicle information.

⁴⁴ The petition for removal of registration requirements (after 25 years or 15 years, as applicable) is filed in the criminal division of the circuit court of the circuit in which the sexual offender resides or previously resided, or in the county where the conviction or adjudication for the qualifying offense occurred).

⁴⁵ The offenses pertinent to juvenile adjudication are listed in s. 943.0435(1)(a)1.d., F.S.

⁴⁶ A registrant will lose eligibility as the result of a felony conviction, but misdemeanor convictions do not void a registrant’s eligibility for removal of the sexual offender registration requirements.

⁴⁷ Removal of registration requirement is prohibited if the adult conviction was for: kidnapping (s. 787.01, F.S.); sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.); lewd battery under s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion; lewd molestation under s. 800.04(5)(b), F.S., or s. 800.04(5)(c)2., F.S., where the court finds the offense involved use of force and unclothed genitals or genital area; any attempt or conspiracy to commit any of these offenses; or a violation of a similar law of another jurisdiction.

- Pertinent only to sexual offenders whose requirement to register is based on a conviction in another state, registration is not required in that state.

Petition for Registration Removal after 15 Years

An exception to the 25-year requirement is a registration-qualifying adult conviction for certain sex offenses. Specifically, a sexual offender may petition for removal of registration requirements if 15 years have elapsed since the sexual offender's registration period began for an adult conviction for committing, attempting to commit, or conspiring to commit false imprisonment⁴⁸ or possession of materials showing sexual conduct by a child (or a violation of a similar law of another jurisdiction) and:

- During the 10 years preceding the petition, the sexual offender has not been convicted or adjudicated delinquent of a felony offense or an offense punishable by more than 1 year of imprisonment;
- Registration was not based upon an adult conviction for an offense for which registration removal is prohibited; and
- Pertinent only to sexual offenders whose requirement to register is based on a conviction in another state, registration is not required in that state.

If a sexual offender is sentenced to a term of incarceration or committed to a residential program for the most recent conviction for a registration-qualifying offense, the registration period begins upon the offender's release from incarceration or commitment. The registration period is tolled during any period in which the sexual offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S. or committed to a residential program. If an offender is sentenced or subject to supervision following incarceration or commitment for the most recent conviction for a registration-qualifying offense, the registration begins when the period of supervision begins. However, if the supervision term exceeds 25 years (for those subject to either of the two 25-year registration-removal provisions) or 15 years (for those subject to the 15-year registration removal provision), the sexual offender cannot petition for removal of the registration requirements until the term of supervision for that conviction is completed.

The bill also amends s. 943.04354, F.S. (the "Romeo and Juliet" statute), which authorizes sexual predators and sexual offenders who committed certain sex offenses as young adults or teenagers, to petition for removal of registration requirements if certain criteria are met. The major substantive changes the bill makes to the statute include:

- Changing the victim age criterion so that the victim may be as young as 13 years of age (current law: 14 years of age) when the offense was committed;⁴⁹

⁴⁸ "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. Section 787.02, F.S.

⁴⁹"SORNA § 111(5)(C) qualifies the foregoing definition of a 'sex offense' to exclude '[a]n offense involving consensual sexual conduct . . . if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.'"

USDOJ, National Guidelines for Sex Offender Registration and Notification at:

http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf (last visited on January 27, 2014).

- Changing the offender age criterion so that the offender may be as old as 18 (current law: 17 years of age) when the offense was committed;
- Authorizing convictions and juvenile adjudications of laws of other jurisdictions to be considered as qualifying offenses if they are similar to Florida qualifying offenses; and
- Authorizing the FDLE to contest the motion for removal of the registration requirements.

Effective Date (Section 12)

The bill takes effect October 1, 2014.

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:

Prison Bed Impact

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of criminal legislation. The CJIC met on January 30, 2014, and determined that the bill would have an insignificant impact on the need for prison beds.

Impact to FDLE

The Florida Department of Law Enforcement (FDLE) has indicated that it can make the basic changes to the existing registry that are required by the bill within existing resources.⁵⁰

Impact to the Courts

According to the Office of the State Courts Administrator (OSCA), “there were fewer than 100 failure-to-register cases filed annually in each of the past two years.” In regard to the fiscal impact of the bill on the state courts system, the OSCA states that this impact “cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.” However, “the anticipated impact on the expenditures of the State Courts System will be minimal.” The OSCA indicates that jury instructions will need to be revised.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 68.07, 775.21, 921.0022, 943.043, 943.0435, 943.04354, 943.0437, 944.606, 944.607, 985.481, and 985.4815.

IX. Additional Information:

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

CS by Judiciary on February 4, 2014:

The committee substitute:

⁵⁰ Analysis of SB 528 (February 19, 2014), Florida Department of Law Enforcement (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

⁵¹ Analysis of SB 28 (January 9, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Judiciary).

- Creates a process for relevant agencies to be notified of a court order granting a registrant's name change petition.
- Creates a process for informing the FDLE and applicable law enforcement agencies when a registrant whose name is legally changed fails to meet requirements for obtaining a replacement driver license or identification card.
- Revises the information that must be reported by a registrant which relates to vehicles the registrant owns and vehicles owned by a person who resides with the registrant.
- Defines the term, "vehicles owned."
- Prohibits the FDLE from posting information regarding vehicles owned by a person who is not a registrant on the department's Internet public registry of sexual predators and sexual offenders.
- Modifies the requirements for petitioning for the removal of registration requirements for registrants and clarifies the period that must elapse before a petition can be filed by a sexual offender.

B. Amendments:

None.