

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1226

INTRODUCER: Criminal Justice Committee; and Senators Book and Hutson

SUBJECT: Sentencing for Sexual Offenders and Sexual Predators

DATE: February 21, 2018

REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Jones</u>   | <u>CJ</u> | <u>Fav/CS</u>    |
| 2. | <u>Forbes</u>   | <u>Hansen</u>  | <u>AP</u> | <u>Favorable</u> |
| 3. | _____           | _____          | <u>RC</u> | _____            |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1226 modifies definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws. The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff’s offices if they have to expand registration hours. The Department of Corrections states that the impact on that department is indeterminate. See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex 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.<sup>1</sup> The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes<sup>2</sup> 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;<sup>3</sup>
- 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.<sup>4</sup>

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, 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.<sup>5</sup>

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.<sup>6</sup> Registration requirements may also

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<sup>1</sup> Sections 775.21 and 943.0435, F.S.

<sup>2</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

<sup>3</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>4</sup> Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

<sup>5</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

<sup>6</sup> All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times

differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information, including residence information, at registration and reregistration (see discussion, *infra*).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.<sup>7</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

### **Reporting Residence Information During Registration and Reregistration**

Section 775.21, F.S., defines terms relevant to the reporting of residence information by sexual predators and sexual offenders (registrant):

- “Permanent residence” means a place where the person abides, lodges, or resides for 5 or more consecutive days.<sup>8</sup>
- “Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.<sup>9</sup>
- “Transient residence” means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.<sup>10</sup>

Provided below is a description of the registration and reregistration processes and the reporting of residence information for sexual predators and sexual offenders who are not in custody or under supervision of the DOC, the DJJ, or another agency.<sup>11</sup>

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per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

<sup>7</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us* (updated October 1, 2016), Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Feb. 1, 2018). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *See* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Feb. 1, 2018).

<sup>8</sup> Section 775.21(2)(k), F.S.

<sup>9</sup> Section 775.21(2)(n), F.S.

<sup>10</sup> Section 775.21(2)(o), F.S.

<sup>11</sup> Registration and reregistration and reporting requirements for persons in those statuses are addressed not only in ss. 775.21 and 934.0435, F.S., but also in ss. 944.606, 944.607, 985.481, and 985.4815, F.S.

Upon initial registration, a registrant who is a sexual offender must report in person at the sheriff's office:

- In the county in which the registrant establishes or maintains a residence within 48 hours after:
  - Establishing a residence in this state; or
  - Being released from the custody, control, or supervision of the DOC or from the custody of a private correctional facility; or
- In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration, if the offender 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.<sup>12</sup>

A registrant who is a sexual predator must register in person:

- At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and
- At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.<sup>13</sup>

At this registration, the registrant must report specified information, including residence information.<sup>14</sup>

Generally, within 48 hours after this registration, a registrant must report in person at a driver license office of the DHSMV. At the driver license office, the registrant must, if otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The registrant must provide any of the information required to be provided at initial registration, if requested. Each time a registrant's driver license or identification card is subject to renewal, and, without regard to the status of the registrant's driver license or identification card, within 48 hours after any change in the offender's residence, the registrant must report in person to a driver license office, and is subject to the same reporting requirements. A registrant who is unable to secure or update a driver license or an identification card with the DHSMV must report any change in the registrant's residence within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV, but this reporting requirement does not negate the requirement for a registrant to obtain a Florida driver license or an identification card.<sup>15</sup>

A registrant who vacates a residence and fails to establish or maintain another one must, within 48 hours after vacating the residence, report in person to the sheriff's office of the county in which he or she is located. The registrant must specify the date upon which he or she intends to or did vacate the residence, and provide or update all of the registration information required to be reported at initial registration. The registrant must provide an address for the residence or

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<sup>12</sup> Section 943.0435(2)(a), F.S.

<sup>13</sup> Section 775.21(6)(e) F.S.

<sup>14</sup> Sections 775.21(6)(a) and (e) and 943.0435(2), F.S.

<sup>15</sup> Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.<sup>16</sup>

A registrant must report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The registrant must provide the addresses and locations where he or she maintains a transient residence. A registrant who remains at a residence after reporting his or her intent to vacate the residence must, within 48 hours after the date upon which the registrant said he or she would or did vacate such residence, report in person to the agency to which he or she reported vacating the residence. The failure of a registrant to make this report is a second degree felony.<sup>17</sup> The failure of a registrant who maintains a transient residence to report in person to the sheriff's office every 30 days (as previously described) is a third degree felony.<sup>18</sup>

A registrant who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than this state must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The registrant must provide to the sheriff the address, municipality, county, state, and country of intended residence. The failure of a registrant to provide his or her intended place of residence is a third degree felony.<sup>19</sup>

A registrant who indicates his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country and later decides to remain in this state must, within 48 hours after the date upon which the registrant indicated he or she would leave this state, report in person to the sheriff to which the registrant reported the intended change of residence, and report his or her intent to remain in this state. A registrant who reports his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country but who remains in this state without reporting to the sheriff (as previously described) commits a second degree felony.<sup>20</sup>

A registrant must report in person to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. Reregistration includes reporting any changes to residence information. Any registrant who fails to report in person as required at the sheriff's office or fails to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence commits a third degree felony.<sup>21</sup>

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<sup>16</sup> Sections 775.21(6)(g)2.a. and 943.0435(4)(b)1., F.S.

<sup>17</sup> A second degree felony is punishable by a prison sentence not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>18</sup> Sections 775.21(6)(g)2.b., 3., and 4., and 943.0435(4)(b)2., (c), and (d), F.S. A third degree felony is punishable by a prison sentence not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Sections 775.21(6)(i) and 943.0435(7), F.S.

<sup>20</sup> Sections 775.21(6)(j) and 943.0435(8), F.S.

<sup>21</sup> Sections 775.21(8)(a) and (10)(a), and 943.0435(14), 944.607(12), and 985.4815(13). F.S.

### **General Penalties under Sections 775.21 and 943.0435, F.S.**

Sections 775.21 and 943.0435, F.S., contain a general penalties provision. Section 775.21(10)(a), F.S., provides that it is a third degree felony for a sexual predator to:

- Fail to register;
- Fail, after registration, to maintain, acquire, or renew a driver license or an identification card;
- Fail to provide required location information;
- Fail to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
- Fail to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information;
- Fail to make a required report in connection with vacating a permanent residence;
- Fail to reregister as required;
- Fail to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence;
- Knowingly provide false registration information by act or omission; or
- Otherwise fail, by act or omission, to comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.

Section 943.0435(9)(a), F.S., provides that a sexual offender who does not comply with the requirements of s. 943.0435, F.S., commits a third degree felony.

### **Community Control**

Community control” is a form of intensive, supervised custody<sup>22</sup> in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.<sup>23</sup> “As with probation, violation of any community control condition may result in revocation by the court and imposition of any sentence which it might have imposed before placing the offender on community control supervision. Many of the offenders who are placed on community control are prison diversions.”<sup>24</sup>

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

The bill amends s. 775.21, F.S., to modify definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3

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<sup>22</sup> The DOC describes it as “form of intensive supervised house arrest in the community[.]” *Community Supervision*, Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/annual/9798/stats/stat\\_cs.html](http://www.dc.state.fl.us/pub/annual/9798/stats/stat_cs.html) (last visited on Feb. 1, 2018).

<sup>23</sup> Section 948.001(3), F.S.

<sup>24</sup> *Supra*, n. 22.

days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The definitions of these terms and corresponding changes to the definitions also apply to s. 943.435, F.S.<sup>25</sup>

The bill also amends the general penalties provisions in ss. 775.21 and 943.0435, F.S., to require mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of either of these statutes if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws (see “Present Situation” section of this analysis, *supra*). The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.<sup>26</sup>

Mandatory community control with electronic monitoring shall be imposed as follows:

- For a first offense committed on or after July 1, 2018, a mandatory minimum term of 6 months of community control with electronic monitoring;
- For a second offense committed on or after July 1, 2018, a mandatory minimum term of 1 year of community control with electronic monitoring; and
- For a third or subsequent offense committed on or after July 1, 2018, a mandatory minimum term of 2 years of community control with electronic monitoring.

Felony violations of ss. 775.21 and 943.0435, F.S., are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.<sup>27</sup> A Level 7 offense scores sufficient sentence points to require a prison sentence,<sup>28</sup> which a sentencing court must impose absent mitigation of a prison sentence.<sup>29</sup> Therefore, if the court does not impose a prison sentence, and the mandatory community control provisions of the bill apply, this is because the court imposed a downward departure sentence.

The bill takes effect on July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>25</sup> Section 943.0435(1)(f), F.S.

<sup>26</sup> See ss. 775.21(10)(g) and 943.0435(13), F.S. This prohibited act is not committed by a sexual predator or sexual offender. The act involves a person unlawfully facilitating the sexual predator’s or sexual offender’s noncompliance with registration requirements by the person withholding important information, providing false information, or harboring or concealing the noncompliant sexual predator or sexual offender.

<sup>27</sup> Section 921.0022(3)(g), F.S.

<sup>28</sup> A Level 7 offense scores 56 sentence points. Section 921.0024(1)(a), F.S. When total sentence points exceed 44 points, the lowest permissible sentence is a prison sentence. Section 921.0024(2), F.S.

<sup>29</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

**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:**

According to the FDLE, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.<sup>30</sup>

The DOC states that probation officers "who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. Impact is indeterminate at this time as we are unable to estimate how many offenders will be sentenced under this requirement."<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts the following sections of the Florida Statutes: 775.25, 944.606, 985.481, and 985.4815, F.S.

<sup>30</sup> 2018 FDLE Legislative Bill Analysis (SB 1226) (Dec. 15, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>31</sup> 2018 Agency Legislative Bill Analysis (SB 1226) (Jan. 19, 2018), Department of Corrections (on file with the Senate Committee on Criminal Justice).



**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 Criminal Justice on February 6, 2018:**

The committee substitute:

- Requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence.
- Excludes from mandatory community control offenses relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

- B. **Amendments:**

None.