

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1301 Sexual Offenders and Predators

**SPONSOR(S):** Fitzenhagen

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1226

| REFERENCE                              | ACTION   | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|----------|---------|--|
| 1) Criminal Justice Subcommittee       | 9 Y, 0 N | Sumner  | Sumner                                   |
| 2) Justice Appropriations Subcommittee |          |         |  |
| 3) Judiciary Committee                 |          |         |  |

### SUMMARY ANALYSIS

The distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence. Residence is defined for purposes of the registration as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination 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. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "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.

HB 1301 reduces the number of days used to determine residency from 5 to 3 for sexual predators or sexual offenders to register. Penalties for failure to timely register are increased after July 1, 2018, and carry a mandatory minimum sentence as follows:

- First offense -- 6 months of community control with electronic monitoring.
- Second offense -- 1 year of community control with electronic monitoring.
- Third offense -- 2 years of community control with electronic monitoring.

The bill appears to have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Florida was the first state to list sexual predators and offenders on the Internet and make information about sexual predators available through a 24-hour/day hotline.<sup>1</sup> There were 471 sexual predators and approximately 8,000 sexual offenders listed when the database was created in 1997. Currently, there are 11,000 registered predators and 54,000 registered offenders.<sup>2</sup>

#### Sexual Predator or Sexual Offender Registration

Current law requires all sexual predators and sexual offenders to comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.<sup>3</sup> After conviction of a qualifying offense, a sexual offender or predator must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>4</sup>

#### *Information Required for Registration*

During his or her initial registration, the registrant must provide certain information to the sheriff's department, including:

- His or her name and social security number;
- Eye and hair color;
- Address and e-mail address;
- Home and cellular telephone numbers and internet identifiers;
- Employment information;
- Vehicle information; and
- Fingerprints and palm prints.

The sheriff then provides the information to the FDLE for inclusion in the statewide database.

A sexual predator or sexual offender must also update his or her registration at specified intervals and immediately report any changes to registration information.<sup>5</sup>

#### *Residence*

Residence, for the purposes of registration, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination 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. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

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<sup>1</sup> The Public Safety Information Act of 1997, CH 1997-299, L.O.F.

<sup>2</sup> Florida Department of Law Enforcement, Florida Sexual Offenders and Predators, *About Us*, available at: <http://offender.fdle.state.fl.us/offender/About.jsp> (last accessed January 22, 2018).

<sup>3</sup> S. 775.21(10), F.S.

<sup>4</sup> SS. 775.21 and 943.0435, F.S.

<sup>5</sup> *Id.*

- "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 not specific street address.<sup>6</sup>

Sexual predators and sexual offenders who are in the custody or under the supervision of the Department of Corrections (DOC) or a local jail must register with the DOC or the jail, respectively.

Conviction of the following offenses require an offender to register as either a sexual offender or predator:

### *Sexual Predator - Qualifying Offenses*

Section 775.21, F.S., provides that a person must be designated a sexual predator if convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>7</sup>
  - Section 794.011, F.S. (sexual battery);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8)(b), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or

<sup>6</sup> S. 775.21, F.S.

<sup>7</sup> These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 804 So. 2d 451 (Fla. 4th DCA 2001).

- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
  - The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

*Sexual Offender - Qualifying Offenses*

Section 943.0435, F.S., defines the term “sexual offender,” in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian;
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
  
2. Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described above.

A juvenile, 14 years of age or older, designated as a sexual offender is required to register in the same manner as an adult sexual offender. The offenses that qualify a juvenile as a sexual offender include:

- Section 794.011, F.S. (sexual battery), excluding s. 794.011(1), F.S.;
- Section 800.04(4)(a)2, F.S. (lewd or lascivious battery by specified sexual activity) where the victim is under 12 years of age or where court finds sexual activity by the use of force or coercion;
- Section 800.04(5)(c)1., F.S. (specified as lewd or lascivious molestation where the defendant is less than 18, the victim is less than 12 years of age and the Court finds molestation involved unclothed genitals; or

- Section 800.04(5)(d), F.S. (specified act of lewd or lascivious molestation where the defendant is less than 18 years of age, the victim is 12 years of age or older but less than 16 years and the Court finds the use of force or coercion and unclothed genitals.

### Effect of Proposed Changes

HB 1301 reduces the aggregate and consecutive number of days to determine residency from 5 to 3 for sexual predator or sexual offender registration. Penalties for failure to timely register are increased after July 1, 2018 and carry a mandatory minimum sentence as follows:

- First offense -- 6 months of community control with electronic monitoring.
- Second offense -- 1 year of community control with electronic monitoring.
- Third or subsequent offense -- 2 years of community control with electronic monitoring.

The bill provides an effective date of July 1, 2018.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.  
**Section 2:** Amends s. 943.0435, F.S., relating to sexual offenders required to register with department; penalty.  
**Section 3:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The Department of Corrections (DOC) states that 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. The fiscal impact to DOC is indeterminate due to the unknown number of offenders who will be sentenced under the mandatory minimum sentence.

According to DOC, for FY 15-16 the average per diem for community supervision was \$5.52 and the current rate for electronic monitoring is \$4.50 per day. Any technological impact to DOC can be absorbed within existing resources.

The Florida Department of Law Enforcement (FDLE) states that the proposed changes in the bill will require updating sexual offender and sexual predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website, and training materials. FDLE has determined the implementation costs can be absorbed within existing resources.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

2. Expenditures:

According to FDLE, eighteen sheriffs' offices have three or more consecutive days where sexual offender or sexual predator registration is unavailable and more than 15 percent (4,637) of the offenders/predators that have an active, permanent, temporary, or transient address in Florida list an active address in those 18 counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

Seven sheriffs' offices have limited registration times and more than 16 percent (4,963) of offenders/predators that have an active permanent, temporary, or transient address in Florida list an active address in those counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES