

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 Criminal Justice

BILL: SB 234

INTRODUCER: Senator Book

SUBJECT: Sexual Offender Registration

DATE: January 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 234 clarifies release from conviction sanctions for sexual offender reporting and registration purposes. Currently, the statute has been interpreted by one court to not require an offender to report and register as a sexual offender for a qualifying offense if the offender has an outstanding fine, even if the offender has been released from the incarcerative portion of his or her sentence. Under the bill, an offender with an outstanding financial obligation is required to report and register as a sexual offender for a qualifying offense.

The bill takes effect upon becoming a law.

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.¹ 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 statutes² 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, and the Department of Children and Families.

¹ Sections 775.21 and 943.0435, F.S.

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

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

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;³
- Has been convicted of a 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.⁴

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 juvenile was 14 years of age or older.⁵

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.⁶ 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 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 at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.⁷ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

³ 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.).

⁴ 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.

⁵ 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."

⁶ 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 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.

⁷ 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. 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 Jan. 4, 2021).

State v. James: Interpreting Release from Conviction Sanctions for Sexual Offender Reporting and Registration Purposes

Recently, in *State v. James*,⁸ the Florida Second District Court of Appeals upheld and affirmed a trial court order granting dismissal of charges against offender Ray La Vel James for failing to report quarterly as a sexual offender. James was sentenced to 15 years in state prison and a \$10,000 fine for a conviction for attempted lewd molestation. After James was released from prison, the State filed a two-count information charging James with failing to report in person quarterly to register as a sexual offender. James moved to dismiss the information, arguing that he was not required to register and report, notwithstanding his release from prison, because his \$10,000 fine had not yet been released or discharged. The trial court agreed and dismissed the charges. The State appealed this dismissal.

Currently, s. 943.0435(1)(h)1.a.(II), F.S., provides that a sexual offender who has been released on or after a specified date from the sanction imposed for any conviction of an offense described in s. 943.0435(1)(h)1.a.(I), F.S., is required to register as a sexual offender in Florida. Section 943.0435(1)(h)1.a.(II), F.S., also defines a sanction as including, but not limited to, "... a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility."

The State conceded and the appellate court found that James was not released from his \$10,000 fine and the fine remained outstanding. However, the State argued that the statute did not require James to be released from both incarceration *and* the fine to qualify as a sexual offender. The appellate court rejected this argument, finding that the plain language of the statute did not accord with the State's interpretation of the language. The court held that since James had not completed his \$10,000 fine, "his sanction, as a whole, has not been released and he does not qualify as a 'sexual offender' for purposes of reporting and registration under section 943.0435."⁹

III. Effect of Proposed Changes:

The bill amends s. 943.0435, F.S., to clarify release from conviction sanctions for sexual offender reporting and registration purposes. Currently, the statute has been interpreted by one appellate court¹⁰ to not require an offender to report and register as a sexual offender for a qualifying offense if the offender has an outstanding fine, even if the offender has been released from the incarcerative portion of his or her sentence. Under the bill, an offender with an outstanding financial obligation is required to report and register as a sexual offender for a qualifying offense.

The bill takes effect upon becoming a law.

⁸ *State v. James*, 298 So.3d 90 (Fla. 2d DCA 2020).

⁹ *State v. James*, *supra*, at p.3.

¹⁰ See footnote 8, *supra*.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The FDLE states that “new language added by the bill in lines 42-45, ‘and does not otherwise meet the criteria for registration as a sexual offender under any other laws of this state,’ is meant to ensure that those who are under supervision of the Florida Department of Corrections are only required to register under Chapter 944, FS.”¹¹ According to the FDLE, this new language “could restrict prosecutors from charging sexual offenders in violation of registration requirements under multiple subsections of s. 943.0435(1)(h)1., F.S.”¹² The FDLE further states:

¹¹ Analysis of SB 234 (Dec. 11, 2020), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice).

¹² *Id.*

There are multiple ways a sexual offender can meet the criteria for registration under s. 943.0435, F.S. Within s. 943.0435, F.S., a sexual offender can meet multiple criteria simultaneously. *Moore v. State*, 992 So. 2d 862 (Fla. 5th 2008).

The concern with the bill language is a court may misconstrue the amended statute language to mean a sexual offender does not meet the criteria under s. 943.0435 (1)(h)1.a., F.S., if they meet the criteria under a different subsection such as [s. 943.0435(1)(h)1.a., b. or c., F.S.].

There is a potential basis for argument against a person's requirement to register as a result of confusion regarding who is or is not required to register under this statute or other registration related statutes.¹³

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0435 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ *Id.*