

STORAGE NAME: h0393s1.cp
DATE: April 14, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 393
RELATING TO: Public Notice
SPONSOR(S): Reps. Morroni, Crist & others
STATUTE(S) AFFECTED: Chapter 775, Florida Statutes
COMPANION BILL(S): SB 210 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 5 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 9 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 393 creates the **“Public Safety Information Act.”** Registration requirements for sexual predators are revised to provide for subsequent registration at a driver’s license facility upon change of temporary or permanent residence, and upon every renewal of the offender’s driver’s license, or Florida identification card. All other sex offenders are required to report to the driver’s license facility in a manner similar to that required of sexual predators.

Express authorization is provided for law enforcement agencies to release criminal offender information to the public and immunity from civil liability attaches to the good-faith execution of those duties.

The Florida Department of Law Enforcement (FDLE) is directed to provide a toll-free number for dissemination of this information. The Department of Corrections is required to make certain information electronically available to the Department of Law Enforcement on sex predators and sex offenders in its custody, control or supervision.

A law enforcement agency that investigates or arrests a person for a sex offense must verify if the person is on probation or release supervision, and if the person is in such status, notify the person’s probation officer.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's Sexual Predator Act

Florida's Sexual Predator Act, s. 775.21, F.S. (1996 Supp.), designates offenders as "sexual predators" where the current offense is a:

- 1) capital, life or first-degree felony violation of Chapter 794, or s. 847.045, F.S.; OR
- 2) any second-degree felony violation of Chapter 794, s. 800.04, 827.071 or 847.0145, F.S.; AND
- 3) the offender has previously been convicted of any violation of s. 794.011(2), (3), (4), (5) or (8), s. 794.023, s. 800.04, s. 827.071, s. 847.0133, or s. 847.0145, F.S.

The sexual predator is required to register directly with the Florida Department of Law Enforcement (FDLE), provide certain information, and be fingerprinted. In lieu of initially registering with the FDLE, the sexual predator may register with the Department of Corrections (DOC) or any law enforcement agency. The sexual predator is not required to make any further registration as a convicted felony offender in any county.

Each sexual predator who is residing permanently or temporarily in the state outside a correctional facility, jail, or secure treatment facility must register or be registered within 48 hours after entering the county of permanent or temporary residence. Any change in temporary or permanent address, also, must be provided within 48 hours. Typically, a designated sexual predator must maintain registration with the FDLE for the duration of the offender's life.

Law enforcement must inform the community and the public of a sexual predator's presence "in a manner deemed appropriate" by the sheriff or police chief.

A sexual predator who fails to register or be registered, or who fails, after registration, to provide location information, commits a third degree felony.

Sexual Offender Information

Section 944.606, F.S. (1996 Supp.), requires the Department of Corrections to provide certain descriptive information, such as criminal history, fingerprints, and a photograph taken within 90 days of release to the sheriff of the county where a sexual offender is sentenced; the sheriff or the police chief, as appropriate, where the sexual offender plans to reside; and any person requesting such information. The term "sexual offender" is defined to include a person who has been convicted of sexual battery and other designated sexual offenses. The sheriff or police chief is required to provide this information to any individual who requests it.

Notification of Inmate Release

Sections 944.605 and 947.177, F.S. (1996 Supp.), provide that within 6 months before the release of an inmate, the Department of Correction's shall notify the sentencing judge, the appropriate state attorney, the original arresting law enforcement agency, the sheriff of the county where the inmate plans to reside, and the victim or the victim's representative. An exit photograph will be

placed in the inmate's file within 120 days of release. Additional information is required for the release of inmates convicted of enumerated violent offenses, including an exit photograph taken within 90 days of release.

B. EFFECT OF PROPOSED CHANGES:

CS/SB 514 creates the "**Public Safety Information Act.**"

New Registration Procedures

The bill amends s. 775.21, F.S. (1996 Supp.), the **Sexual Predator Act**, to provide for different registration procedures for sexual predators. Sexual predators already in custody must register with the Department of Corrections. Sexual predators who are not in custody must register at an office of the Florida Department of Law Enforcement (FDLE), or at the sheriff's office within 48 hours of establishing permanent residence. The Sexual Predator's fingerprints and photograph will be forwarded to the Florida Department of Law Enforcement.

Any change in permanent or temporary residence will be accompanied by an additional registration with the Department of Highway Safety and Motor Vehicles. The sexual predator will obtain a current Florida driver's licence or identification card with each registration, and renewal, and bear all costs thereof. Any failure to register or to renew license or identification constitutes a third-degree felony.

New Authorization to Release Criminal History Information

The bill creates a new provision which expressly authorizes any law enforcement agency to release any criminal history information not otherwise exempt from publication. However, this section does not contravene s. 943.053, F.S., relating to dissemination of an offender's public Florida criminal history information report ("rap sheet"). This section, also, expressly provides immunity from civil liability to any law enforcement agency releasing this information in good faith.

The bill creates a new provision requiring the FDLE to provide a toll-free number for public access to public information regarding sex offenders (as described herein).

New Reporting Requirements for Sex Offenders

The bill defines a "**Sex Offender**" as anyone convicted of:

- 1) Luring or enticing a child, any sexual battery offense; procuring a child under age 18 for prostitution; lewd or lascivious assault; promoting a sexual performance by a child; certain acts in connection with obscenity; computer pornography; selling or transferring custody or control of a minor to promote porn films involving the minor; or any similar offense from this or any other state, or
- 2) Released on or after October 1, 1997, from a sanction imposed for the aforementioned offenses.

The requirements for reporting are essentially the same as the registration requirements for a sexual predator. Initial reporting is made to the FDLE or the sheriff of the county where the offender resides. Subsequent reporting is made to the DHSMV which information is forwarded to the FDLE. A sex offender who does not comply with the requirements of the new section commits a

third-degree felony. Similarly, this section expressly provides immunity from civil liability for good-faith compliance.

New Reporting requirements for DOC

The bill creates a new section that requires the DOC to report to the FDLE certain information regarding sex offenders who are in DOC custody, control or supervision on or after October 1, 1997. The qualifying offenses are the same as those offenses described which would qualify a releasee as a sex offender. In addition to the usual information, DOC must provide **a digitized photograph** of the inmate, taken within 60 days of release. This information, also, must be made available in an electronic format compatible with the Florida Crime Information Center. Similarly, DOC is expressly provided with immunity from civil liability in conjunction with these duties.

The bill amends **ss. 944.605 and 947.177, F.S. (1996 Supp.)**, as follows: The requirement of notification of the inmate's release date within 6 months is amended to provide that the agency shall provide notification of the release date as soon as possible, upon an early release. Language requiring the agency to notify the original sentencing judge is replaced with notification to the chief judge of the sentencing circuit. The FDLE is added to the list of notification and photography requirements are changed to **within 60 days** of release, regardless of offense.

The bill amends **s. 944.606, F.S. (1996 Supp.)** by adding the FDLE to the list of parties for whom the DOC is required to provide sex offender information, and such information provided must be electronically available to the FDLE in a format compatible with the requirements of the Florida Crime Information Center. Similarly, sex offender information may be released by any law enforcement agency.

New Procedures for Arresting Agencies

The bill amends **s. 948.06, F.S. (1996 Supp.)**, by requiring arresting agencies (for sex offenses) to contact the DOC to verify whether the arrestee is under supervision and inform the necessary probation officer.

New Offense

The bill amends **s. 921.0012, F.S. (1996 Supp.)** by ranking the new offense (failure to register) as a level 6 offense in the offense severity ranking chart.

New Label for Judgement and Sentence (documents)

Finally, the bill provides that at the time an offender is sentenced for an offense involving a victim who at the time the offense was committed, was a minor, the court shall stamp the face of the judgment with **"VICTIM IS A MINOR"** and shall note this fact on any document or information sent to the FDLE for its incorporation into its FCIC system.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1:

Names the bill the "Public Safety Information Act."

Section 2:

Provides new registration procedures for sexual predators.

Section 3:

Authorizes release of criminal offender information to the public; provides immunity.

Section 4:

Establishes a toll-free telephone number.

Section 5:

Creates new class of "sex offender" requiring similar reporting procedures as class of "sexual predator."

Section 6:

Notification of law enforcement and other agencies of imminent release of "sex offenders."

Section 7:

Notification of law enforcement "as soon as possible" upon early release of "sex offenders."

Section 8:

Clarifying legislative intent.

Section 9:

Amending notification list to replace original sentencing judge with chief judge of the sentencing circuit.

Section 10:

Requiring arresting agencies to consult FDLE for sex offenses and to notify appropriate parole officer when it is discovered arrestee is under supervision.

Section 11:

Setting the offense severity ranking for the new offense of failing to register at level 6.

Section 12:

Corrects a cross-reference to s. 948.06 which is amended by this legislation.

Section 13:

Providing all judgements and sentences to be stamped "VICTIM IS A MINOR" where appropriate.

III. **FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments, below.

2. Recurring Effects:

See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None known.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference (CJEC) has determined this bill will have an “indeterminate, but minimal” impact.

The Department of Corrections reports the bill will have no impact on prison beds, but indicates the following resources will be required to meet the digitized photography requirements of the bill:

Projected Cost

Initial Cost Items (non-recurring)

78 Digital Cameras (ratio of 1 camera for two offices)	\$ 54,600	
20 Workstations (1 for each circuit office)		<u>\$ 55,360.</u>

Total Initial cost (nonrecurring)		\$109,960
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Recurring Costs for Workstation Sites

Monthly phone line charges	\$	100
Internet monthly charges	\$	<u>30</u>

Total Recurring monthly costs per site	\$	130
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Total Recurring Cost per annum		\$ 31,200
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See Appendix ‘A’ for FDLE’s estimate of its costs for implementing the bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

As a criminal law, this bill is exempt from Article VII, Section 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

Similar notification legislation in the states of New Jersey and New York has met with disparate results from Federal courts applying federal protections against ex post facto laws. See *Doe v. Pataki*, 940 F.Supp. 603 (S.D.N.Y. 1996); *W.P. v. Poritz*, 931 F.Supp. 1199 (D.N.J. 1996). However, the Attorney General of Florida has issued an opinion suggesting this type of notification legislation will be deemed constitutional. See *Attorney General Opinion, 97-09 (February 10, 1997)*.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

THE COMMITTEE ON CRIME AND PUNISHMENT:

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