SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1260

SPONSOR: Criminal Justice Committee and Senator Brown-Waite

SUBJECT: Sexual Predators and Sexual Offenders

DATE: March 17, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 1260 streamlines current sexual predator registration provisions, corrects incorrect statutory references, clarifies wording relating to the implementation of the sexual predator and sexual offender registration requirements, and conforms several provisions of the sexual predator and sexual offender registration laws to meet requirements of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

Specifically, the bill does the following:

- Eliminates the current "tiering" or categorizing of sexual predators based upon when the predator's offense was committed in relation to the changes in the Sexual Predator Act, s. 775.21 F.S. (1998 Supp.). This tiering was to prevent retrospective application of changes to the law when it was uncertain whether registration and notification constituted punishments. Current law, consistent with recent state and federal court opinions, is that registration and notification are not punishments, and therefore, registration and notification requirements are retrospectively applied.

- Amends the definition of sexual predator to clarify that the attempted offenses that qualify for sexual predator designation apply, regardless of the age of the victim. This change is consistent with the Jacob Wetterling Act.

- Clarifies that the term "temporary residence" includes temporary residences outside of this state for purposes of sexual predator and sexual offender registration. The change is consistent with the standard in the federal Jacob Wetterling Act relating to registration of non-resident workers and students who are sexual predators.

- Provides that the Department of Corrections notify the Department of Law Enforcement when a sexual predator under its custody or control, or supervision, or when a sexual

offender is subject to release from incarceration, escapes or absconds from custody, or dies. A custodian of a local jail in which a sexual predator is housed is also required to provide the same information to the Department of Law Enforcement.

- Eliminates the ability of sexual predators or sexual offenders to be removed from registration requirements if they have their civil rights restored. The change is consistent with the Jacob Wetterling Act which requires lifetime registration of sexual predators.

- Permits a sexual offender to petition the court for removal of the registration requirement if:

  - the offender was 18 years of age or younger at the time of the offense;

  - adjudication was withheld; and

  - the offender was lawfully released from confinement, supervision, or sanction, whichever occurred later, for at least 10 years and has not been arrested for any felony or misdemeanor offense since release.

This bill substantially amends the following sections of the Florida Statutes: 775.21; 921.022; 943.0435; 944.606; and 944.607.

II. Present Situation:

A. Florida's Sexual Predator Registration and Notification Laws

Florida's Sexual Predator Act, s. 775.21, F.S. (1998 Supp.), provides that an offender shall be designated as a "sexual predator" for certain statutorily designated sexual offenses and other designated offenses. The court sentencing the offender for an offense applicable to the sexual predator designation, makes the designation subject to statutory procedures for making a written finding. There are also provisions for a court to designate as a sexual predator those offenders who were administratively designated as sexual predators under former law.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with the DOC. Private correctional facilities are also governed by these requirements. After the initial registration with the DOC, a sexual predator who is not incarcerated and who resides in the community must register in person at a driver's license facility of the Department of Highway Safety and Motor Vehicles (DHSMV). Registration procedures are also provided for sexual predators under federal supervision and in the custody of a local jail. The law specifies how statutorily-specified information collected by the DOC, the DHSMV, and others, is to be provided to the Florida Department of Law Enforcement (FDLE). Current law does not require that the DOC notify the FDLE if the sexual predator escapes, absconds from custody, or dies. Current law also does not require the custodian of a jail to notify the FDLE if the sexual predator escapes from custody or dies.

If the sexual predator 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, and the predator establishes or maintains a

residence in the state, the predator must initially register in person at an FDLE office, or at the sheriffs office in the county in which the predator establishes or maintains a permanent or temporary residence in this state.

After the initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under the supervision of the DOC, must register at a driver's license facility of DHSMV. At the driver's license facility, the sexual predator is required, if qualified, to secure a Florida driver's license or license renewal, or in lieu of that, secure a Florida identification card. If the driver's license or ID card is subject to renewal, the predator is required to report in person to the driver's license facility, even if the predator's residence has not changed.

Other requirements are also specified in the law for information that the sexual predator must provide, including the address of any current temporary residence (a similar requirement is contained in s. 944.0435, F.S. (1998 Supp.), relating to sexual offender registration). The law does not specifically specify that the temporary residence shall include any temporary residence outside of this state. Current federal standards for state sexual predator laws require registration of non-resident workers and students who are sexual predators. Therefore, requiring a sexual predator to provide his or her out-of-state temporary residence, if applicable, is consistent with applicable federal standards. *See* Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified at 42 U.S.C. 14071) which contains the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act." The specific reference here is to 42 U.S.C. 14071(b)(7)(B).

A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator in this state but who has received a similar designation in another state and has been subject to registration or community or public notification requirements in that state, is required to register as a "sexual offender" under s. 943.0435, F.S. (1998 Supp.) or s. 944.607, F.S. (1998 Supp.), (if the person is in the custody or control of, or under the supervision of, the DOC, or if the person is in the custody of a private correctional facility, on or after October 1, 1997).

Extensive procedures are also set forth in the law for providing notification to communities about certain information relating to sexual predators, much of which is compiled during this registration process.

A designated sexual predator must maintain registration with the FDLE for the duration of the predator's life, unless the predator's civil rights are restored, a full pardon has been granted, or a conviction has been set aside for any felony offense that meets the criteria for the sexual predator designation. However, a petition for removal of the sexual predator registration requirements may be filed by a sexual predator who was designated a sexual predator by a court before October 1, 1998, and who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 10 years, and has not been arrested for any felony or misdemeanor offense since release. For a person designated as a sexual predator on or after October 1, 1998, a petition may also be filed, subject to the same qualifiers, except that the period since release must be for at least 20 years.

Prior to the 1998 changes to the law, a sexual predator could petition for removal of the sexual predator designation 10 years after release, provided he or she committed no new offense. The 1998 amendments to the law changed the time period to 20 years after release and applied this change prospectively.

Since s. 775.21, F.S. (1998 Supp.) and s. 943.0435, F.S.(1998. Supp.), provide, respectively, for an exemption from the sexual predator or sexual offender registration requirements if a sexual predator's civil rights or sexual offender's civil rights are restored. Federal standards in the Wetterling Act do not provide for an absolute exemption from registration based upon restoration of civil rights. *(See* 42 U.S.C. section 14071(b)(6)(B)(I) and (ii))

B. Florida's Sexual Offender Registration and Notification Laws

Section 943.0435, F.S. (1998 Supp.), requires a "sexual offender," which is defined as a person who has been convicted of sexual battery and other designated offenses and who was released on or after October 1, 1997, from the sanction imposed for the offense or offenses, to report and register in a manner similar to the registration of a sexual predator under s. 775.21, F.S.

A sexual offender required to register under s. 944.0435, F.S. (1998 Supp.), must initially report in person at an office of the FDLE, or at the sheriff's office in the county in which the offender establishes or maintains permanent or temporary residence in this state. The sexual offender is required to provide statutorily-specified information, including the offender's place of temporary residence. The law does not specifically state that temporary residence includes a temporary residence outside of this state.

A sexual offender required to register under s. 944.435, F.S. (1998 Supp.), must maintain registration with the FDLE for the duration of the offender's life, unless the offender's civil rights are restored, a full pardon has been granted, or a conviction has been set aside for any felony offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a petition for removal of the registration requirements may be filed by a sexual offender who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and has not been arrested for any felony or misdemeanor offense since release.

Section 944.606, F.S. (1998 Supp.), requires that the DOC provide certain information to the FDLE and others, as specified in the law, regarding any sexual offender being released from incarceration. The term "sexual offender" is defined as a person who has been convicted of sexual battery and other designated offenses. Currently, the law contains an incorrect statutory reference in the list of offenses applicable to the definition of a sexual offender. Specifically, s. 782.02, F.S., is referenced. The correct statutory reference should be s. 787.02, F.S.

C. "Tiering" of Sexual Predator Registration and Notifications Laws: 1995 and 1996 Changes

When Florida's Sexual Predator Act was enacted in 1993, the law provided for an administrative designation of a person as a "sexual predator" based on a definition of that term in the law. Registration procedures were provided. The original law did not authorize notification of

information regarding a designated sexual predator. Essentially, the sexual predator designation and registration of sexual predators were tools for law enforcement to track these offenders. *See* ch. 93-277, L.O.F.

In 1995, the Sexual Predator Act was amended. Limited notification procedures were introduced. The 1995 law required a court sentencing an offender who met the sexual predator definition to designate the offender as a sexual predator at the time of sentencing. This provision did not affect those offenders who were already administratively designated. Following registration of the sexual predator, a court hearing was to take place to determine if the sexual predator constituted a threat to the public and that this threat warranted notification to the community where the predator resides of the predator's presence of the community. If such a finding was made, the sheriff of the county or police chief where the predator resides was required to provide limited notification of the predator's presence. *See* ch. 95-264 and ch. 95-283, L.O.F.

In 1996, the Sexual Predator Act was amended again. Three important changes to the law were made. First, the law required that all sexual predators, including those who had been administratively designated as sexual predators under prior law, be designated as sexual predators by a court of law. Therefore, the law provided for retrospective application of these new designation procedures to those persons who had been administratively designated as sexual predators.

Second, the law was amended to provide for broad notification of information about sexual predators.

Third, the law created a "tiering" system. If a person had committed an offense on or after October 1, 1993, but before October 1, 1995, that person fell into the first "tier" or Tier I (the word "tier' is used here descriptively; the law never mentions tiers.). A Tier I sexual predator was not subject to notification, since notification did not exist in the law at the time the predator's offense was committed. Since this person was administratively designated a sexual predator, absent a subsequent court designation of the person as a sexual predator, the person was no longer a sexual predator. *See* ch. 96-388, L.O.F.

If a person had committed an offense on or after October 1, 1995, but before October 1, 1996, that person fell into the second "tier" or Tier II. A Tier II sexual predator might be subject to limited notification in the manner provided in the 1995 law. Like the Tier I sexual predator, absent a subsequent court designation of the Tier II sexual predator as a sexual predator, the person was no longer a sexual predator.

If a person had an offense committed on or after October 1, 1996, that person fell into the third "tier" or Tier III. A Tier III sexual predator was designated as a sexual predator at the time of sentencing and was subject to broad notification.

This tiering had practical relevancy in sexual predator and sexual offender registration and notification. At that time, the body of case law was very mixed on whether sexual predator registration and notification constituted punishments. This question is important in terms of retrospective application of changes to the registration and notification laws. Ex post facto provisions in the federal and state constitutions prohibit retrospective application of punishments.

In the exercise of caution, the Legislature, with the agreement of the agencies, created in the 1996 law what essentially amounted to a tiered system that would prevent retrospective application of any changes to the registration and notification laws that the Legislature and agencies were concerned would be challenged on ex post facto grounds.

D. The 1997 Changes to Florida's Sexual Predator and Sexual Offender Registration and Notification Laws and the Effect of Case Law Supporting Retrospective Application of Changes to Registration and Notification Laws

Subsequent to the 1996 changes to s. 775.21, F.S., a federal district court in New Jersey upheld that state's sexual offender registration and notification laws (popularly referred to as "Megan's Law"). *See W.P. v. Poritz*, 931 F.Supp. 1199 (D.N.J. 1996).

The *Poritz* case represented most of the constitutional issues that had been raised on the subject of public notification, the feature of Megan's Law that evoked the most heated public and legal debate. In *Poritz*, the Court considered an ex post fact challenge to New Jersey's public notification law. The central question that the Court faced in examining the ex post facto claims was whether notification constituted punishment. Since the New Jersey law provided for retrospective application of its notification law, the question of whether notification is "punishment" was crucial to the ex post facto inquiry.

The Court determined that the legislative intent behind Megan's Law is totally remedial. It relied heavily on the conclusion that the law served "significant remedial goals," since its primary focus is on "the protection of children and others from previously-convicted sex offenders, near them in the community, who have been found to have a moderate or high risk of re-offense." *Poritz*, 931 F.Supp. at 1214. The Court also determined that Megan's Law is narrowly designed to limit the circumstances under which information may be released and to prevent abuse of the released information.

Consistent with the *Poritz* ruling, as well as other relevant case law and legal opinion, the Legislature retrospectively applied the broad notification provisions of the 1996 law that, to that point, applied only to Tier III sexual predators.

In 1997, the Legislature amended the law to apply broad notification provisions to all sexual predators, regardless of the date their offense was committed. Registration procedures changed significantly and applied to similarly situated sexual predators, regardless of the offense date. *See* ch. 97-299, L.O.F.

Subsequent to the 1997 changes to the sexual predator and sexual offender registration and notification laws, the Third Federal Circuit held that retrospective application of New Jersey's "Megan's Law" is not an ex post facto violation. The Third Federal Circuit found that the law does not constitute additional punishment, because it imposes no restrictions on a person's ability to live, work in the community, move from place to place, obtain a professional license, or secure a governmental benefit. On February 23, 1998, the U.S. Supreme Court denied certiorari, thereby letting stand the Third Circuit ruling. *E.B. v. Verniero*, 119 F.3d 1077 (3rd Cir. 1997), *cert. denied*, 66 LW 3543 (Case No. 97-887).

On February 23, 1998, the U.S. Supreme Court, by denying certiorari, let stand a ruling of the Second Federal Circuit that New York's "Sex Offender Registration Act" does not inflict punishment, and therefore, the retrospective application of its provisions does not violate the prohibition against ex post facto laws. *Doe v. Pataki*, 120 F.3d 1263 (2d. Cir. 1997), *cert. denied*, 66 LW 3556 (Case No. 97-7023). For purposes of Florida's registration and notification laws, the New York case may be more important than the New Jersey case because it addresses both registration and public notification.

As far as the Act's registration requirements for high-risk sex offenders, the Second Circuit declared that:

- These requirements were enacted primarily to serve the nonpunitive goal of enhancing future law enforcement efforts.

- Registration is a necessary prerequisite to public notification which also serves a nonpunitive goal of protecting members of the public from potential danger posed by convicted sex offenders.

- The text of the Act bears out this nonpunitive, public safety goal by providing that:

    - The duration, form, and frequency of the registration are determined solely by the sexual offender meeting the qualifications.

    - The offender can petition the court for removal of the registration requirements.

    - The unauthorized release of information regarding the offender is prohibited.

- The registration requirements "do not ordinarily result even in societal opprobrium or harassment," do not "serve the goals of criminal punishment," and do not "resemble any measures traditionally considered punitive."

While no national precedent was set by the U.S. Supreme Court's denial of certiorari in either case discussed here, those cases would have been perfect vehicles for the Court to address the issues pertaining to sexual offender registration and notification raised in those cases.

To date, the Florida courts have upheld the sexual predator and sexual offender registration and notification laws of this state. *See, e.g., Burkett v. State*, 1998 WL 374712 (2d DCA); *Walker v. State*, 718 So.2d 217 (Fla. 4th DCA 1998); *Rickman v. State*, 714 So.2d 538 (Fla. 5th DCA 1998); *Ortega v. State*, 712 So.2d 833 (Fla. 4th DCA 1998); *Angell v. State*, 712 So.2d 1132 (Fla. 2d DCA 1998); *Ziegler v. State*, 708 So.2d 351 (Fla. 1st DCA 1998); *Macias v. State*, 708 So.2d 1044 (Fla. 4th DCA 1998); *Fletcher v. State*, 699 So.2d 346 (Fla. 5th DCA 1997), *rev. denied*, 707 So.2d 1124 (Fla.1998); *State v. Carrasco*, 701 So.2d 656 (Fla. 4th DCA 1997). But *see Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998) (upholding retrospective application to changes in sexual predator registration procedures, but, in dicta, stating that the defendant would be entitled to assert an ex post facto challenge to any retrospective application of a notification provision and another provision restricting employment and volunteer work).

For almost all intents and purposes, the tiering system in s. 775.21, F.S., appeared to have no meaning with the 1997 changes to the law. Both notification and registration provisions were given retrospective application, and the body of case law supported such retrospective application. The "sexual predator" definition, which was modified by the inclusion of additional, qualifying offenses was applied to all sexual predators, regardless of offense date. The same situation occurred with changes to the law in 1998, which were mainly to conform Florida's sexual predator and sexual offender registration and notification laws with standards in the federal Jacob Wetterling Act. No Tier IV was created, though the three-tier system was retained.

Currently, the only relevant time-period distinction is in the provision of the current law authorizing a petition for removal of the sexual predator registration requirements (discussed in detail in the "Present Situation" section of this analysis).

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1260 streamlines current sexual predator registration provisions, corrects incorrect statutory references and other technical errors, clarifies wording that relates to implementation of the sexual predator and sexual offender registration requirements, and conforms several provisions of the sexual predator and sexual offender registration laws to meet requirements of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

The CS amends s. 775.21, F.S. (1998 Supp.), to eliminate the current three-category or three-tier system embodied in that statute. The bill streamlines the statute so that it is clear that the sexual predator definition, registration procedures, notification procedures, and other provisions of the law apply to all sexual predators whose offense qualifying them for sexual predator designation was committed on or after October 1, 1993, the date of enactment of the Sexual Predator Act. This change essentially reflects what is already currently required in the law since all similarly situated sexual predators are subject to the same definition of a "sexual predator," the same registration procedures, the same notification procedures, and other provisions of the law.

The CS also amends: s. 775.21(6), F.S. (1998 Supp.), which relates to sexual predator registration; s. 943.0435(2), F.S. (1998 Supp.), which relates to registration of released sexual offenders and s. 944.607(4), F.S. (1998 Supp.), which relates to notification to FDLE of information or sexual offenders. These subsections require that certain information be provided on, respectively, a sexual predator or a sexual offender. That information includes the address of any current temporary residence. The bill clarifies that the information on temporary residence includes a temporary residence within or outside of state. These clarifications are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Act, which requires registration of sexual predators who are non-resident workers and students.

The CS also amends s. 775.21, F.S. (1998 Supp.), to require the DOC to notify the FDLE of any sexual predator who escapes or absconds from custody or supervision, or if the sexual predator dies. Similarly, the law is amended to require the custodian of a jail to notify the FDLE if any sexual predator in the custody of the jail escapes from custody or dies. Similar changes are made in s. 944.606, F.S. (1998 Supp.), as it relates to sexual offenders released from incarceration.

The CS also amends provisions of s. 775.21, F.S. (1998 Supp.), and s. 944.0435, F.S. (1998 Supp.), which relate, respectively, to petitioning for the removal of the sexual predator or sexual offender registration requirements. Currently, a sexual predator or sexual offender whose civil rights are restored is not subject to the sexual predator or sexual offender registration requirements (assuming the person does not commit another qualifying offense in the future). This provision is inconsistent with the Jacob Wetterling Act because there is no absolute exemption in the Act from registration based upon restoration of civil rights. The CS deletes this exemption.

The CS also amends s. 944.0435, F.S. (1998 Supp.), to provide that a sexual offender who was 18 years of age or younger at the time the offense was committed and received a withhold of adjudication, and who has been lawfully released from confinement supervision, or sanction, whichever occurred later, for at least 10 years and has not been arrested for any felony or misdemeanor offense since release, may petition for removal of the sexual offender registration requirements. The requested relief must still comply with federal standards.

Finally, the CS corrects an incorrect statutory reference in the definition of "sexual offender" in s. 944.606, F.S. (1998 Supp.), and an incorrect statutory reference in s. 921.0022, F.S. (1998 Supp.), the sentencing code offense ranking chart, relating to the failure of a sexual predator to comply with registration requirements when a sexual offender is released from incarceration.

The CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An analysis of the fiscal impact of CS/SB 1260 was not available at the time this analysis was completed. However, Fiscal Policy staff are presently analyzing this CS for fiscal impact. The changes to the sexual predator and sexual offender registration laws made by CS/SB 1260 are largely technical in nature.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.