

STORAGE NAME: h1171a.cj

DATE: April 18, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 1171

RELATING TO: Sexual Predators and Sexual Offenders

SPONSOR(S): Representative Heyman

TIED BILL(S):

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

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 0
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 6 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

HB 1171 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 bill also eliminates the categorization of sexual predators based upon when the predator's offense was committed. Recently, Florida appellate courts and federal courts have held that registration and notification to the public do not constitute punishment and therefore can be retroactively required without violating the ex post facto clause of the constitution.

The bill also adds offenses which can be used to qualify an offender as a sexual offender or sexual predator. The bill eliminates the ability of sexual predators or sexual offenders to be released from registration requirements if they have their civil rights restored.

Current law provides that various government employees or persons acting at the request of law enforcement are immune from civil liability for damages resulting from the release of information under the sexual predator and offender notification and registration laws. The bill specifies that those employees are immune from civil liability for good-faith compliance with the requirements of the section or for the release of information under this section. The bill also provides that the employee shall be presumed to have acted in good faith in complying, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by an agency or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of residence.

The bill becomes effective upon becoming law.

The Committee on Judiciary adopted a strike-all amendment. The amendment is traveling with the bill. The amendment is discussed in Section VI.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill expands the list of offenses which qualify an offender for the registration and public notification provisions of the sexual predator and sexual offender acts.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

1. **Florida Sexual Predators Act**

Section 775.21, F.S., is titled the "Florida Sexual Predators Act" and generally requires that upon a finding by a court that an offender is a "sexual predator", the offender must register with the Florida Department of Law Enforcement (FDLE) in order that members of the community may be notified of the sexual predator's presence. s. 775.21(3)(d), F.S.

- a. Criteria: A trial court must designate as a sexual predator an offender who has been convicted of one of a list of specified sexual offenses if the conviction has not been overturned and the offender has not been pardoned.¹ s. 775.21(4), F.S.
- b. Registration: A sexual predator who is in custody or under the supervision of the Department of Corrections (DOC) must register with DOC. A sexual predator who is under the supervision (but is not incarcerated) of DOC then must register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV). The statute provides a procedure for this information to be given to FDLE. s. 775.21(6)(b), F.S.

A sexual predator who is not in custody or under the supervision of DOC must initially register with FDLE or the local sheriff's office. Within 48 hours of the initial registration, the sexual predator must register at a DHSMV office. At the driver's license office, the sexual predator is required to obtain or renew a Florida driver's license or an identification card. s. 775.21(6)(e), F.S.

The sexual predator must maintain registration with the department for the rest of his or her life unless the sexual predator has had his or her civil rights restored, has had the conviction for the sexual offense reversed or has been pardoned. s. 775.21(6)(l), F.S. However, the statute provides a procedure by which a person who was declared a sexual predator after October 1, 1998, who has been released from prison for at

¹In order to qualify, the offender must have been convicted of: 1) a capital, life, or first degree felony sexual battery or; 2) one of a list of second degree felony sexual offenses and have a prior conviction for such an offense.

least 20 years,² can petition the court for a removal of the sexual predator designation. The sexual predator must demonstrate that he or she has not been arrested for any felony or misdemeanor offense since being released. s. 775.21(6)(l), F.S.

- c. Community Notification: Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the city where the sexual predator resides must notify the public of the presence of the sexual predator "in a manner deemed appropriate by the sheriff or the chief of police". s. 775.21(7)(a), F.S. Within 48 hours of receiving notification of the presence of a sexual predator, the sheriff or chief of police must notify each licensed day care center, elementary school, middle school, and high school within a one mile radius of the residence of the sexual predator. The information must include the name of the sexual predator, a description and a photograph, the sexual predator's current address, the circumstances of the sexual predator's offense and whether the victim was a minor or an adult. s. 775.21(7)(a), F.S.
- d. History of Sexual Predator Statute The Florida Sexual Predator Act was enacted in 1993, to provide for an administrative designation of a person as a sexual predator. The law originally required the sexual predator to register but did not authorize public notification. ch. 93-277, Laws of Florida. In 1995, the law was amended to require a court to designate an offender who qualified as a sexual predator at the time of sentencing. The trial court then determined if a sexual predator constituted a threat to the public and whether the community should be notified of the sexual predator's presence. ch. 95-264 and ch. 95-283, Laws of Florida.

In 1996, the Sexual Predator Act was amended to provide for broad public notification of information about sexual predators. The law also divided offenders based on when the offense was committed. The first category applied to offenses committed between October 1, 1993 and October 1, 1995. These offenders had been administratively designated a sexual predator. In 1996, the law provided that if the offender was not designated a sexual predator by a court, the person was no longer considered a sexual predator. ch. 96-388, Laws of Florida. The second category applied to offenses committed between October 1, 1995 and October 1, 1996. Like the offenders in the first category, if the sexual predator designation was not made by a court, the person was no longer considered a sexual predator. The third category applied to offenses committed on or after October 1, 1996. The categories were created because, at the time, it was not clear as to whether sexual predator registration and notification constituted punishment and would therefore be an ex post facto violation to apply retroactively.

In response to several court rulings which held that public notification was not an ex post facto violation, in 1997, the legislature amended the Sexual Predator Act to apply the public notification procedures to each category of sexual predators, regardless of when the offense was committed. This eliminated most of the original justification for dividing sexual predators into categories based on the date of the offense. Florida district courts that have addressed the issue have upheld the constitutionality of the sexual predator registration and notification laws of the state. See e.g., Burkett v. State, 731 So. 2d 695 (Fla. 2nd DCA 1998); Oce v. State, 742 So. 2d 464 (Fla. 3rd DCA 1999)(holding that sexual predator designation which requires registration and

² The statute provides that a sexual predator who was designated as a sexual predator before October 1, 1998 can petition to have the sexual predator designation removed after 10 years.

community notification was collateral consequence of plea agreement); Rickman v. State, 714 So. 2d 538 (Fla. 5th DCA 1998)(holding that registration and notification procedures are not ex post facto punishment and do not violate double jeopardy). Federal courts have likewise rejected ex post facto claims against sexual predator notification requirements. See E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997); Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997).

- e. Penalties: A sexual predator who fails to register or fails to maintain, acquire or renew a driver's license or identification card commits a third degree felony. s. 775.21(10)(a), F.S. A sexual predator who has been convicted of one of a specified list of sexual offenses, where the victim of the offense was a minor, commits a third degree felony if the sexual predator becomes employed at any business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S.

2. Sexual Offender Registration

A "sexual offender" is a person who has been convicted of committing, or attempting to commit, one of a list of specified offenses and who has been released after October 1, 1997 from prison, probation or community control. s. 943.0435, F.S. This section does not apply to a person who has been designated as a sexual predator. s. 943.0435(5), F.S. The designation "sexual predator" is given by a trial court while the term "sexual offender" applies to any person who has been convicted of a list of specified crimes and has been released from prison or supervision after October 1, 1997.

A sexual offender is required to report to FDLE or the sheriff's office and provide identifying information within 48 hours of being released. s. 943.0435(2), F.S. Within 48 hours after the initial report, the sexual offender must report to a driver's license office and secure either a driver's license or an identification card. s. 943.0435(3), F.S.

A sexual offender must maintain registration with the department for the rest of his or her life unless the sexual offender has had his or her civil rights restored or has received a pardon or had the conviction overturned. s. 943.0435(11), F.S. A sexual offender who has been released from confinement or supervision for at least 20 years, and who has not been arrested for any felony or misdemeanor offense may petition the court to remove the requirement for registration as a sexual offender. s. 943.0435(11), F.S.

The Department of Corrections is required to provide information regarding inmates who are being released and who were convicted of one of a list of specified sexual offenses to FDLE, the sheriff of the county where the sexual offender was sentenced, the sheriff of the county where the sexual offender plans to reside and any person who requests such information. s. 944.606(3), F.S. While the department is required to notify the public of information regarding sexual predators, the department is permitted, but not required to notify the public of information regarding sexual offenders. s. 944.606(3)(d), F.S.

3. Jacob Wetterling Act:

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, contained at 42 U.S.C. 14071, sets forth federal standards that state sexual predator registration plans are required to implement in order to receive all of the federal funds for which the state is eligible. According to FDLE, some of the changes which are made to the Sexual Predator Act by this bill are necessary in order to ensure that the state receives all of the funds for which it is eligible.

C. EFFECT OF PROPOSED CHANGES:

The bill amends the Sexual Predator Act to eliminate the current three category system of designating sexual predators based on the date of the offense. This will clarify that the sexual predator definition, registration procedures and notification procedures will apply to all sexual predators who committed their offenses after October 1, 1993. The bill provides procedures for a court to make a finding that persons who were administratively designated as sexual predators are sexual predators and must abide by registration and reporting requirements. It also permits the person to challenge such a designation.

The bill adds to the list of offenses which qualify an offender for sexual predator designation. For example, the bill includes a lewd or lascivious molestation³ of a victim under 12 years of age by an offender over 18 years of age in the list of offenses that would qualify an offender for sexual predator designation. Previously, an offender could only be designated as a sexual predator for committing that offense if the offender had a previous conviction for such an offense. The bill also includes specified attempted kidnaping offenses in the list of offenses for which an offender must be designated a sexual predator. The bill removes two crimes in chapter 794 from the list of crimes that can lead to sexual predator designation.⁴

Currently, the statute provides that a defendant must be designated as a sexual predator for a conviction for a second degree or greater felony violation of a list of offenses including kidnaping, false imprisonment and sexual battery where the offender had a prior conviction for such an offense. The bill includes convictions and attempts for these offenses which are third degree felonies. The bill makes clear that convictions in other jurisdictions for analogous Florida crimes can qualify persons for sexual predator designation.

The bill makes corresponding changes to the sexual offender statute to expand the list of qualifying offenses.

The bill also contains changes to the sexual predator and sexual offender statutes to conform to the Jacob Wetterling Act:

- Length of registration: The statute currently provides that a sexual predator or sexual offender must maintain registration with the department for the duration of his or her life unless the sexual predator has had his or her civil rights restored, has received a full pardon, or has had the conviction reversed. The bill removes the exemption from registration upon a restoration of civil rights. This is consistent with the Jacob Wetterling Act which does not provide an exemption from registration based on restoration of civil rights.
- Removal from Registration: The bill amends the procedure for petitioning for removal of sexual predator or sexual offender registration to provide that the relief given comply with the standards of the Jacob Wetterling Act.

³ Lewd or lascivious molestation is committed when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks of a victim, or the clothing covering them or entices the victim to so touch the perpetrator.

⁴ Section 794.011(10), Florida Statutes, relating to making a false report of sexual battery by certain government employees, and section 794.0235, Florida Statutes, relating to MPA treatment by sexual offenders.

- Verification of Addresses: The sexual predator statute requires FDLE to implement a system for verifying the addresses of sexual predators. The bill specifies that the system must conform with the provisions of the Jacob Wetterling Act.
- Temporary Residences: The bill amends the list of information that sexual predators and sexual offenders must give to FDLE by requiring that the department be informed of temporary residences that are out of state.

The bill also makes other changes to the sexual predator and sexual offender statutes as follows:

- The bill requires the Department of Corrections or a local jail to inform FDLE if a sexual predator or sexual offender escapes from custody or supervision or dies.
- The statute currently requires a sexual predator or a sexual offender to report to a driver's license office within 48 hours of a change in residence. The bill requires a sexual predator to report within 48 hours of a change in legal name.
- The statute currently provides that when a court has made a written finding that an offender is a sexual predator, an elected or appointed official, public employee, school administrator, or an employee, agency, or any individual or entity acting at the request of any law enforcement agency is immune from civil liability for damages resulting from the release of information under this section. The bill specifies that those employees are immune from civil liability for good-faith compliance with the requirements of the section or for the release of information under this section. The bill also provides that the employee shall be presumed to have acted in good faith in complying, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by FDLE, DHSMV or DOC or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of residence.
- The bill contains legislative findings stating that sexual offenders often pose a high risk of engaging in sexual offenses after being released from incarceration and that protection of the public from sexual offenders is a paramount governmental interest. The findings also state that the designation of a person as a sexual offender is not a sentence or a punishment, but is "simply the status of the offender which is the result of a conviction for having committed certain crimes."

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 775.21, the Sexual Predator Act.

Section 2: Provides legislative findings regarding sexual offenders.

Section 3: Amends s. 943.0435 regarding sexual offender registration with FDLE.

Section 4: Amends s. 944.606 regarding notification of release of sexual offender by DOC.

Section 5: Amending s. 944.607 regarding notification to FDLE.

Section 6: Providing effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

Local and county governments may incur an impact due to increased reporting requirements. County and local law enforcement agencies may incur an impact due to the address verification requirements for those predators not under the custody or supervision of the Department of Corrections.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

Under the Jacob Wetterling Act, states had three years from September 13, 1994, to comply with the Act or they would lose 10 percent of funds allocated under Title 42, United States Code. 42 U.S. 14071(g)(1). Florida has not yet passed legislation to comply with the Jacob Wetterling Act. FDLE states that Florida has until July 1, 2000 to comply with the Act or it risks losing \$2.7 million in federal funds.

The Department of Corrections reports a minor fiscal impact associated with modifications to the information system that captures offense information in assisting and determining which cases meet sex offender or predator criteria.

The Department of Highway Safety and Motor Vehicles reports no fiscal impact to the department, as all sexual predators are currently required to register and provide address and name changes.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2000, the Committee on Judiciary approved a strike-all amendment to conform the House bill with its Senate companion. The amendment makes clear that sexual predators and sexual offenders are required to report name changes that occur by marriage or any legal process. It also allows a sexual offender to have the designation removed if he or she was under 18 at the time the offense was committed, if adjudication was withheld for that offense, and 10 years have elapsed since the offender was placed on probation without an arrest for a felony or misdemeanor. The amendment is traveling with the bill.

VII. SIGNATURES:

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