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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COLLEGES AND UNIVERSITIES
ANALYSIS**

BILL #: HB 841
RELATING TO: Sexual Predators and Offenders
SPONSOR(S): Representative Bowen
TIED BILL(S): None

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) COLLEGES AND UNIVERSITIES
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill requires registered sexual predators and offenders who are enrolled or employed at an institution of higher education in Florida to register certain information with the state and to provide notice of each change of enrollment or employment status at an institution. These changes are intended to conform Florida's laws to federal standards relating to the registration of sexual predators and sexual offenders.

The bill specifies the duty of the court to uphold laws governing sexual predators and sexual offenders. The bill increases the time period in which an agency may move to modify or set aside a court order or injunction that affects an agency's performance of a duty, or that limits the agency's exercise of authority as set forth under sexual predator or sexual offender laws.

HB 841 revises several provisions relating to sexual offenders to reflect current provisions provided under sexual predator laws. The bill modifies the definition of "sexual offender" to allow registration of an offender who resides in this state and has not been designated as a sexual predator by a Florida court, but has been designated as a sexual predator in another state or jurisdiction and was subjected to registration or notification as a result of that designation. The definition is further amended to allow registration and notification of sexual offenders residing in Florida under the supervision of another state as a result of a conviction for a specified sexual offense.

The bill clarifies provisions relating to the removal of sexual offender registration requirements by a court, and also revises provisions to clarify initial registration and change of name and address procedures for sexual predators and sexual offenders.

The bill revises the definition of "sexual offender" to include the offense of transmission of child pornography as a qualifying offense for purposes of sexual offender registration.

This bill has an effective date of July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill contains provisions that will impose additional registration requirements for sexual predators and offenders who are enrolled, employed, or carrying on a vocation at a community college, state university, or independent postsecondary institution.

B. PRESENT SITUATION:

Federal Sexual Predator and Sexual Offender Registration Laws

The Violent Crime Control and Law Enforcement Act of 1994, (PL. 103-322) contains the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act" (codified at 42 U.S.C. 14071), which provides financial incentives for states to establish registration requirements for persons convicted of certain crimes against children and violent sexual offenses. States that fail to comply with the federal mandate are subject to a 10 percent reduction in Byrne Formula Grant funding¹. The Wetterling Act requires states to allow law enforcement agencies to release relevant information about sexual offenders in order to protect the public. This act also requires states to provide for the registration of residents who were convicted of a sexual offense in another state.

Congress amended the Violent Crime Control and Law Enforcement Act of 1994 on October 28, 2000, with the passage of the Campus Sex Crimes Prevention Act. (See Pub. L. No. 106-386.) Pursuant to this act, individuals required to register as a sex offender with a state must also provide notice to that state of any institution of higher education where the individual is employed, carries on a vocation, or is a student. These individuals are also required to report each change in enrollment or employment status at the institution.

This registration information must be made available to law enforcement agencies with jurisdiction where an institution of higher education is located, and states must ensure that the information is entered into the state sexual offender registry. Educational institutions are specifically not required to request the information from the state. Under the Campus Sex Crimes Prevention Act, educational institutions must advise the campus community of methods for obtaining sexual offender information. This act does not prohibit schools from disclosing sexual offender information provided to the institution.

¹ The federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program provides funding for state and local crime eradication efforts.

Florida's Sexual Predator Registration

Florida's Sexual Predator Act is established in s. 775.21, F.S., and provides that an offender shall be designated as a sexual predator for certain statutorily designated sexual offenses. The sexual predator designation is made by the court sentencing the offender for an offense applicable to the sexual predator designation. This law provides legislative findings and intent regarding the necessity for sexual predator registration and community and public notification regarding sexual predators.

Section 775.21(6), F.S., specifies the type of information that must be provided by the predator in each instance of registration, and how it is to be collected, transmitted, maintained, and disseminated by the agencies responsible for implementing the law. Penalties are provided for the sexual predator's failure to comply with the registration requirements and for misuse of public records information regarding sexual predators, s. 775.21(10), F.S.

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 DOC and provide certain information.² If the sexual predator is not in the custody or control of, or under the supervision of, DOC, or is not in the custody of a private correctional facility, and the predator resides in this state, the predator must register in person at an office of the Florida Department of Law Enforcement (FDLE), or at the sheriff's office in the county in which the predator resides, and must provide certain information. Registration procedures are also provided for sexual predators in the custody of a local jail or under federal supervision.

A sexual predator who is not incarcerated and resides in the community, including those under DOC supervision, must register in person at a driver's license facility of the Department of Highway Safety and Motor Vehicles (DHSMV).

A sexual predator who plans to establish residency in another state must report in person to the sheriff of the county of current residence or FDLE within 48 hours before date of departure to provide intended residence information. Failure to provide this information is a third degree felony pursuant to s. 775.21(6)(i), F.S.

As provided in s. 775.21(5)(d), F.S., a person who resides in Florida and who has been designated a sexual predator, a violent sexual predator or another sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, in the other state must register as a sexual offender in the manner set forth in the laws pertaining to sexual offender registration.³ These out of state offenders are also subject to the community and public notifications and penalty provisions of the sexual offender laws.

Law enforcement agencies must inform members of the community and the public of a sexual predator's presence as set forth in s. 775.21(7), F.S. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff or the chief of police where the sexual predator resides must notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the sexual predator's temporary or permanent residence of the presence of the sexual predator. FDLE and DOC are required to verify the addresses of sexual predators, and that verification must be consistent with the provisions of the federal Jacob Wetterling Act.

² s. 775.21(6)(b), F.S.

³ ss. 943.0435 and 944.607, F.S.

A designated sexual predator must maintain registration with FDLE for the duration of the predator's life, unless a full pardon has been granted, or a conviction has been set aside for any felony offense meeting the criteria for the sexual predator designation. However, the law provides a mechanism for the sexual predator to petition for removal of the sexual predator designation after a certain period has elapsed, if the petitioner has had no arrests during that period and the court is otherwise satisfied the petitioner is not a current or potential threat to public safety.

Florida's Sexual Offender Registration

Registration requirements and other provisions relevant to certain sexual offenders (those not designated sexual predators) are provided in ss. 943.0435 and 944.607, F.S. Many of the requirements and provisions in these sections are similar, if not identical, to those provided for sexual predators under s. 775.21, F.S.

Community and public notification regarding registered sexual offenders is authorized but not mandatory as provided by ss. 943.043 and 944.607(3)(d), (4), F.S.

A sexual offender must maintain registration with FDLE for the duration of his or her life, unless a full pardon has been granted, or a conviction has been set aside for any offense meeting the criteria for the sexual offender designation. However, a petition for removal of the sexual offender 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 offense since release. A petition may also be filed by a sexual offender who was 18 years of age or younger at the time of the offense, had adjudication withheld, had 10 years elapse since being placed on probation and has not been arrested for any offense.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Section 1:

This section amends s. 775.21, F.S., relating to sexual predator definitions and registration requirements. "Institution of higher education" is defined as a community college, state university, or independent postsecondary institution. It is unclear whether a state college like New College or St. Petersburg College would be defined as an institution of higher education for the purposes of this bill.

"Change in enrollment or employment status" means the commencement or termination of enrollment or employment. It is unclear what a sexual predator must do when he or she is a student or an employee at an institution of higher education who transfers his or her employment or enrollment to a satellite campus location of the institution. For example, staff at the Florida State University (FSU) Registrar's Office state that when a student transfers between campuses within the FSU system, their enrollment status is not affected; the change is a change in the campus the student is attending. Likewise, staff in the FSU Personnel Office state that when an employee at the university transfers to one of the other FSU campuses, their employment status is not terminated nor are they commencing a new employment.

The bill requires sexual predators who are enrolled, employed, or carrying on a vocation at an institution of higher education to provide the institution's name, address, county, campus information, and enrollment or employment status to FDLE. Within 48 hours after any change in

enrollment or employment status, the sexual predator must report the change, in person, to the sheriff's office, or to the DOC if under the supervision of or in the custody or control of DOC. The sheriff or DOC must promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

Section 775.21(6)(e), F.S., is amended to clarify provisions relating to changes in a sexual predator's permanent or temporary residence or name.

Section 2:

Section 2 amends s. 775.24, F.S., relating to the duty of the court to uphold laws governing sexual predators and sexual offenders. Under current law, if a court enters an order or injunction that affects an agency's performance of a duty or limits the agency's exercise of authority conferred under sexual predator and sexual offender laws, the affected agency may, within 60 days after the receipt of the order, move to modify or set aside the order, or to dissolve the injunction. This bill extends the time period for such a motion from 60 days to one year.

Section 3:

This section amends s. 943.0435, F.S.; relating to the registration of sexual offenders. The definition of "sexual offender" is amended to include the offense of transmission of child pornography⁴ as a qualifying offense for purposes of sexual offender registration.

The bill revises the definition of "sexual offender" to require registration of an offender who resides in the state and who has not been designated as a sexual predator by a Florida court, but who has been designated as a sexual predator, a sexually violent predator, or other sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, as a result of that designation, or who would be if the person were a resident of that state or jurisdiction. *These provisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

The definition of sexual offender is further amended to require the registration of a person who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, an enumerated sexual offense and who establishes or maintains a residence in Florida.

For purposes of sexual offender registration, "institution of higher education" is defined as a community college, state university, or independent postsecondary institution. It is unclear whether a state college like New College or St. Petersburg College would be defined as an institution of higher education for the purposes of this bill.

"Change in enrollment or employment status" means the commencement or termination of enrollment or employment. It is unclear what a sexual offender must do when he or she is a student or an employee at an institution of higher education who transfers his or her employment or enrollment to a satellite campus location of the institution. For example, staff at the Florida State University (FSU) Registrar's Office state that when a student transfers between campuses within the FSU system, their enrollment status is not affected; the change is a change in the campus the

⁴s. 847.0137, F.S.

student is attending. Likewise, staff in the FSU Personnel Office state that when an employee at the university transfers to one of the other FSU campuses, their employment status is not terminated nor are they commencing a new employment.

The bill requires sexual offenders who are enrolled, employed, or carrying on a vocation at an institution of higher education to provide the institution's name, address, county, campus information, and enrollment or employment status to FDLE. Within 48 hours after any change in enrollment or employment status, the sexual offender must report the change, in person, at an office of FDLE, or at the sheriff's office. The sheriff must promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

This section clarifies provisions relating to changes in a sexual offender's permanent or temporary residence or name.

Section 943.0435(11)(b), F.S., is amended to provide that a sexual offender may 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;
- the victim was 12 years of age or older;
- adjudication was withheld; and
- the offender has been released from all sanctions and 10 years have elapsed since being placed on probation, and the offender has not been arrested for any offense since the date of conviction of the qualifying offense.

This revision addresses the unintended effects of changes made to the law by the 2000 Legislature, which could be construed to allow an offender who committed an act using violence, force, threat, intimidation or coercion against a minor to be removed from the obligations of sexual offender registration. (See Chapter 2000-207, L.O.F.)

Section 943.0435(11), F.S., is amended and requires a sexual offender who resides in Florida and who has been designated a sexual offender by another state, to maintain sexual offender registration for the duration of his or her life. This registration is maintained until the person provides FDLE with an order from the court that designated the person as a sexual predator, a sexually violent predator, or another sexual offender designation in the state in which the order was issued, stating that such designation has been removed.

This section is further amended by providing legislative statements and findings of public policy concerning sexual offenders. The Legislature finds that sexual offenders pose a risk to the public; these offenders have a reduced expectation of privacy; releasing sexual offender information to law enforcement agencies and the public promotes public safety. The Legislature finds that designation as a sexual offender is a status, not a sentence or punishment. This language was enacted by the 2000 Legislature as Committee Substitute for Senate Bills 1400 and 1224, but was not incorporated into the 2000 Florida Statutes. (See Ch. 2000-207, L.O.F.)

Section 4:

This section of the bill creates s. 943.0436, F.S., relating to the duty of the court to uphold sexual predator and sexual offender laws. In this section, the Legislature expresses intent that laws relating to sexual predators and sexual offenders are substantive law. Unless a court determines that a person or entity is not operating in accordance with the laws or that the laws or any part of the laws are unconstitutional or unconstitutionally applied, a court shall not limit or nullify requirements placed on sexual predators and sexual offenders under these laws. If a person meets

the criteria for designation as a sexual predator or sexual offender, the court cannot: exempt that person from the designation or registration requirements; restrict the compiling, reporting, or release of public records information relating to sexual predators or sexual offenders; or prevent any person or entity from performing its duties relating to their authority under these laws. An agency affected by a court order that limits its authority or affects its duties may move to modify or set aside the order, or to dissolve the injunction within 1 year after the receipt of the order or injunction.

Section 5:

This section amends s. 944.606(b), F.S., relating to notification regarding sexual offenders release from incarceration. The definition of “sexual offender” is amended to include the offense of transmission of child pornography⁵ as a qualifying offense for purposes of sexual offender registration.

Section 6:

Section 6 of HB 841 amends 944.607, F.S., relating to sexual offenders under the custody or control of, or under the supervision of DOC or a private correctional facility. The definition of “sexual offender” is amended to include the offense of transmission of pornography⁶ as a qualifying offense for purposes of sexual offender registration.

The bill revises the definition of a “sexual offender” who is in the custody or control of, or under the supervision of DOC or is in the custody of a private correctional facility for the purposes of sexual offender registration. It requires the registration of an offender who resides in the state and who has not been designated as a sexual predator by a Florida court, but who has been designated as a sexual predator, a sexually violent predator, or other sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, as a result of that designation, or who would be if the person were a resident of that state or jurisdiction. *These provisions are intended to indicate that Florida’s laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

For purposes of sexual offender registration, “institution of higher education” is defined as a community college, state university, or independent postsecondary institution. It is unclear whether a state college like New College or St. Petersburg College would be defined as an institution of higher education for the purposes of this bill.

“Change in enrollment or employment status” means the commencement or termination of enrollment or employment. It is unclear what a sexual offender must do when he or she is a student or an employee at an institution of higher education who transfers his or her employment or enrollment to a satellite campus location of the institution. For example, staff at the FSU Registrar’s Office state that when a student transfers between campuses within the FSU system, their enrollment status is not affected; the change is a change in the campus the student is attending. Likewise, staff in the FSU Personnel Office state that when an employee at the university transfers to one of the other FSU campuses, their employment status is not terminated nor are they commencing a new employment.

The bill requires sexual offenders who are enrolled, employed, or carrying on a vocation at an institution of higher education to provide the institution’s name, address, county, campus information, and enrollment or employment status to DOC. Within 48 hours after any change in

⁵ s. 847.0137, F.S.

⁶ s. 847.0137, F.S.

enrollment or employment status, the sexual offender must report the change to DOC. The DOC must promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The extent to which the increased reporting requirements may have a fiscal impact on sheriff's offices or the Department of Corrections is unknown at this time.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities 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:

Sexual predator registration and notification laws have been found not to encroach on constitutional privacy interests, *Johnson v. State*, 2000 WL 1760181 (Fla. 5th DCA 2000); not to violate state constitutional due process rights, *id.*; and not to constitute double jeopardy, *Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998).

Retroactive application of the sexual predator registration and notification laws has been found not to constitute an ex post facto violation. See *Mendez v. State*, 2001 WL 314524*2 (Fla. 5th DCA 2001) (“ . . . [D]esignation as a sexual predator is ‘neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.’ *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997). Therefore, no ex post facto concerns exist that would prohibit applying the current statute to Mendez. *Rickman v. State*, 714 So.2d538 (Fla. 5th DCA 1998); *Doe v. Portiz*, 142 N.J. 1, 662 A.2d367 (N.J. 1995).”)

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections and Safety adopted one amendment on January 30, 2002. This amendment revises ss. 943.0435, 944.606, and 944.607, F.S., and amends the definition of “sexual offender” to include the offense of transmission of material harmful to minors by electronic device or equipment as a qualifying offense for purposes of sexual offender registration. This amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Lynn Dodson

Trina Kramer

AS REVISED BY THE COMMITTEE ON COLLEGES AND UNIVERSITIES:

Prepared by:

Staff Director:

Steven Henderson

Betty Tilton, Ph.D.