

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill does not reduce government or expand individual freedom in that it expands the criteria for which sexually violent predators may have to register following release from involuntary civil commitment.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator Registration

Section 775.21, F.S., provides that persons convicted of certain serious sexual offenses must register as a “sexual predator.” These offenses include:

- *A capital, life, or first-degree felony violation*, or any attempt thereof, of s. 787.01, F.S. or s. 787.02, F.S., (Kidnapping or False Imprisonment) where the victim is a minor and the defendant is not the victim's parent, or of chapter 794, F.S., (Sexual Battery), s. 800.04, F.S. (Lewd or Lascivious offenses) or s. 847.0145, F.S., (Selling or Buying Minors for Child Pornography) or a violation of a similar law of another jurisdiction; or
- *Any felony violation*, or any attempt thereof, s. 787.01, F.S. or s. 787.02, F.S., (Kidnapping or False Imprisonment) where the victim is a minor and the defendant is not the victim's parent, or of chapter 794, F.S., (Sexual Battery), s. 800.04, F.S. (Lewd or Lascivious offenses) or s. 847.0145, F.S., (Selling or Buying Minors for Child Pornography) or a violation of a similar law of another jurisdiction where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication.

Once designated at sentencing as a sexual predator, offenders must comply with a stringent set of registration requirements. Under s. 775.21(6), F.S., a sexual predator must register with the Department of Corrections the following information:

Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

If an offender is not under the supervision of the Department of Corrections or within the custody of a private corrections facility, the offender must register with the department or with his or her local sheriff's office within 48 hours of establishing permanent or temporary residence in the state.¹ Sexual Predators must also register with the Department Motor Vehicles and obtain a driver's license or identification card.²

¹ Section 775.21(6)(e), F.S.

² Section 775.21(6)(f), F.S.

Failure of a sexual predator to register or acquire a driver's license or identification card, or otherwise comply with the section is a third degree felony.

Civil Commitment of Sexual Violent Predators

Part V of ch. 394, F.S., provides that sexually violent predators may be subject to involuntary civil commitment. A sexually violent predator is a person convicted of largely the same criteria listed above for a sexual predator. Under this section, notice of a sexual predator's anticipated release from the Department of Corrections or the Department of Juvenile Justice is provided to the state attorney by a specified time period prior to the release (s. 394.913, F.S.). The state attorney is authorized to file a probable cause petition alleging that the person is a "sexually violent predator" for the purposes of qualifying for civil commitment. A hearing before a judge or jury is then held on the issue of whether a person is a sexually violent predator. The standard is clear and convincing evidence and the jury's decision must be unanimous (s. 394.917, F.S.). Upon a verdict that the person is a sexually violent predator, the person is committed to the Department of Children and Families for control, care, and treatment "until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large." (s. 394.917, F.S.)

HB 1641

HB 1641 w/CS clarifies aspects of the Sexual Predator Act. The bill provides that "a conviction for similar offenses" to those provided in Florida law in other jurisdictions includes a plea of guilty or nolo contendere resulting in a sanction. The term "sanction" is defined in the bill to include "a fine, probation, community control, parole, conditional release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility."

HB 1641 w/CS also expands the criteria for sexual predators to include those who have been involuntarily civilly committed as a sexually violent predator under ch. 394, F.S. The bill also requires judges at the time of determination of civil commitment to determine whether a person qualifies as a sexual predator. The clerk is charged with providing a copy of the order to the Department of Corrections. Similarly, DOC is required to notify the state attorney if a person in its custody qualifies.

The bill also provides that the requirement that a sexual predator renew his or her driver's license within 48 hours is without regard to the status of the predator's license or identification card.

The bill provides further that a sexual predator, who fails after vacating a residence to establish or maintain another permanent or temporary residence within 48 hours of vacating the previous residence, must report to the local sheriff's office in the county in which he or she is located. The predator must specify the date he or she vacated the residence, update any registration information, and provide a local address. If a sexual predator gives notice of intent to vacate, but fails to leave, the predator must report in person to the agency he or she previously notified. Failure to comply with this section is a third degree felony.

HB 1641 w/CS also clarifies aspects of the prosecution of acts or omission in violation of the sexual predator act. Acts or omissions may be prosecuted in the county in which they occurred, the county in which the predator was last registered, the county in which the offenses occurred which qualified the person as a sexual predator, or in the county in which he or she was first designated a sexual predator. In addition, the bill provides that an arrest, service of an information, or arraignment for a violation of the act for failure to register, constitutes actual notice of the duty to register. A sexual predator's failure to register following arrest, service or arraignment will constitute a new charge.

C. SECTION DIRECTORY:

Section 1. Amends and reenacts for the purpose of incorporation s. 775.21, F.S.

Section 2. Amends and reenacts for the purpose of incorporation s. 943.0435, F.S.

Section 3. Amends s. 944.606, F.S.

Section 4. Amends and reenacts for the purpose of incorporation s. 944.607, F.S.

Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Reenacts for the purpose of incorporation ss. 775.13, 943.0436, 775.24, 947.177, 775.261, 921.0022, 944. 608, 39.806, 63.092, 944.609, 947.1405, 948.12, respectively.

Section 18. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated the prison bed impact of this bill on the Department of Corrections. However, because local and state law enforcement and corrections officials are already responsible for maintaining registration information, there appears to be minimal, if any, fiscal impact.

The Department of Corrections reports its belief that this is a technical glitch bill covering registration of sexual predators and offenders.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill is a criminal law.

2. Other:

Florida's Sexual Predator Act has been constitutionally scrutinized in virtually every possible way and has, with one exception, been found constitutional. See e.g. Therrien v. State, 859 So.2d 585 (Fla 1st DCA 2003) (Due process and Privacy) Reyes v. State 854 So.2d 816 (Fla 4th DCA 2003) (Procedural Due Process, Separation of Powers) Robinson v. State 804 So.2d 451 (Fla. 4th DCA

2001) (Equal Protection) Simmons v. State 753 So.2d 753 (Fla. 4th DCA 2000) (Ex Post Facto) Rickman v. State 714 So.2d 538 (Fla. 5th DCA 1998) (Double Jeopardy).

The main exception is the case of Espinola v. State, 855 So.2d 1281 (Fla. 3rd DCA 2003). In this case the Third District Court of Appeals held that the Florida Sexual Predator Act violated procedural due process, because the automatic criteria provision for determination of who constituted a sexual predator did not afford adequate notice and a right to be heard. Id at 1289. However, it is important to note that two other District Court of Appeals have recently disagreed with the holding in Espinola. Miller v. State, 861 So.2d 1283 (Fla. 5th DCA 2004), Martin v. State, 864 So.2d 589 (Fla. 5th DCA 2004) and Frazier v. State, 2004 WL 221043 (Fla. 1st DCA 2004). The Florida Supreme Court has agreed to hear the Espinola case and has the final say in matters of state constitutionality has not yet resolved this conflict between the districts.

Another case which has bearing upon the constitutionality of the Florida Sexual Predators Act is State v. Giorgetti SC 02-1812 (Fla 2004) This case held that to prosecute a predator for failure to register without proving actual notice of the registration requirements violated procedural due process. The bill addresses some issues raised in this case by providing that if a person is arrested or served with an information for a charge of failure to register, that such arrest or service constitutes actual notice for a new charge of failure to register should the person not register within 48 hours.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Corrections Subcommittee voted to favorably recommend the bill with a strike-all amendment. The strike-all amendment incorporates changes recommended by the Florida Department of Law Enforcement. The amendment makes the following changes to bill: 1) removes language allowing for civil commitments in other states to be considered for sexual predator criteria, since other state may utilize other criteria not considered under ch. 394, F.S. 2) provides that a sexual predator who fails to comply with registration requirements may also be prosecuted in the county in which he was designated a sexual predator, 3) removes language which prevented a predator from asserting a defense that he did not have a temporary or permanent residence and therefore was not obligated to register because the bill already addresses this scenario 4) adds language which requires that the predator be advised of his or her obligation to register under s. 944.607(4),F.S.

On March 17, 2004, the Committee on Public Safety & Crime Prevention voted to adopt a committee substitute incorporating the above-described amendment.