

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may require an increased number of individuals to register as sexual predators or sexual offenders.

Promote personal responsibility: Offenders who have been convicted of certain criminal offenses will be required to register as a sexual predator or sexual offender.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sexual Predator Registration: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. kidnapping or false imprisonment¹ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;²
 - c. lewd or lascivious offenses;³
 - d. selling or buying a minors for child pornography;⁴ or
 - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
 - a. kidnapping, false imprisonment or luring or enticing a child⁵ where the victim is a minor and the defendant is not the victim's parent,
 - b. sexual battery;⁶
 - c. procuring a person under the age of 18 for prostitution;⁷
 - d. lewd or lascivious offenses;
 - e. lewd or lascivious battery on an elderly person;⁸
 - f. promoting sexual performance by a child;⁹
 - g. selling or buying a minors for child pornography; or
 - h. a violation of a similar law of another jurisdiction.¹⁰

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and

¹ s. 787.01, F.S. or s. 787.02, F.S.,

² See chapter 794, F.S.

³ s. 800.04, F.S.

⁴ s. 847.0145, F.S.

⁵ s. 787.025, F.S.

⁶ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

⁷ s. 796.03, F.S.

⁸ s. 825.1025(2)(b), F.S.

⁹ s. 827.071, F.S.

¹⁰ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony.

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 and provide specified information. Private correctional facilities are also governed by these requirements.

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 this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.¹¹

A sexual predator's failure to comply with registration requirements is a third degree felony.¹² A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.¹³

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

1. kidnapping, false imprisonment or luring or enticing a child¹⁴ where the victim is a minor and the defendant is not the victim's parent;
2. sexual battery;¹⁵

¹¹ s. 775.21(8), F.S.

¹² s. 775.21(10), F.S.

¹³ S. 775.21(10)(b), F.S.

¹⁴ s. 787.025, F.S.

3. procuring a person under the age of 18 for prostitution;¹⁶
4. lewd or lascivious offenses;
5. lewd or lascivious battery on an elderly person;¹⁷
6. promoting sexual performance by a child;¹⁸
7. selling or buying a minors for child pornography;
8. selling or showing obscenity to a minor;¹⁹
9. using a computer to solicit sexual conduct of or with a minor;²⁰
10. transmitting child pornography;²¹
11. transmitting material harmful to minors;²²
12. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

Effect of Proposed Changes

HB 327 amends the definition of “institution of higher education” within the sexual predator and sexual offender statutes to include career centers. As a result, a sexual predator or sexual offender who is enrolled, employed or carrying on a vocation at a career center will be required to provide to FDLE the name, address and county of the institution as well as additional information and will be required to report any change in enrollment or employment status to the sheriff or Department of Corrections as appropriate. The sheriff will be required to notify the career center of the sexual predator’s presence and any change in enrollment or employment status. The change to the definition of institution of higher education is intended to ensure compliance with the federal Campus Sex Crimes Prevention Act.²³

HB 327 adds to the list of offenses that qualify a person for sexual offender or sexual predator registration the offense of sexual misconduct by a Department of Juvenile Justice program employee (or an employee of a program operated by a provider under a contract with the department) with a juvenile offender.²⁴ HB 327 also adds the offense of selling or buying of a minor into sex trafficking or prostitution.²⁵ As such, a person who commits one of these offenses and has a previous conviction for this offense, or another qualifying offense, must be designated a sexual predator. A person who has been convicted of one of these offenses (and has no other prior qualifying offense) will be considered a sexual offender. HB 327 also adds these offenses to the list of offenses which preclude a sexual predator from working or volunteering at a place where children regularly congregate.

The bill clarifies that a person who lives in Florida and has been designated as a sexual predator or sexual offender and who is subject to registration or public notification in another state must register as a sexual offender in Florida, even if the person does not otherwise qualify as a sexual predator or sexual offender under Florida law. According to the FDLE “[t]his change will help ensure compliance with the requirements of the Federal Jacob Wetterling Act mandating state to state notification upon the movement of offenders.”

¹⁵ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

¹⁶ s. 796.03, F.S.

¹⁷ s. 825.1025(2)(b), F.S.

¹⁸ s. 827.071, F.S.

¹⁹ s. 847.0133, F.S.

²⁰ s. 847.0135, F.S.

²¹ s. 847.0137, F.S.

²² s. 847.0138, F.S.

²³ Codified at 42 U.S.C. 14071(j)

²⁴ s. 985.4045(1), F.S.

²⁵ s. 796.035, F.S.

The bill provides that a sexual predator or sexual offender must register at a sheriff's office. Currently such registration can occur at a sheriff's office or at a FDLE office. The sheriff will then submit this information to FDLE as under current law.

The bill clarifies under what circumstances a sexual predator or sexual offender is required to report his or her intent to move out of state.

HB 327 revises the operational date used for career offender registration from January 1, 2003 to July 1, 2002.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act to add qualifying offenses.

Section 2. Amends s. 775.261, F.S., relating to Florida Career Offender Registration Act.

Section 3. Amends s. 943.0435, F.S., relating to sexual offender registration to modify definitions and add qualifying offenses.

Section 4. Amends s. 944.606, relating to sexual offender notification upon release.

Section 5. Amends s. 944.607, F.S. relating to sexual offender registration to add qualifying offenses.

Section 6. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 327 will require a person who has been convicted of the offense of sexual misconduct by an employee of the Department of Juvenile Justice or of the offense of selling or buying a minor into sex trafficking to register as a sexual predator or a sexual offender. FDLE has indicated that the changes made by the bill to the sexual offender and sexual predator laws will have a minor impact on the functions of their respective registries. The department states that "[m]odifications and updates will be made to electronic and print training and educational materials and forms. Updates will disburse to local law enforcement, other criminal justice partners and registrants advising of modification to these laws."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 327 may have a fiscal impact on a person who is required by the bill to register as a sexual predator or sexual offender.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted two amendments. One amended the sexual predator statute to provide that all registrations occur at a sheriff's office and that FDLE offices be removed from this process. This amendment also clarifies circumstances in which a sexual predator is required to report to a sheriff's office. The other amendment made identical changes to the sexual offender statute.