

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 646

INTRODUCER: Judiciary Committee and Senator Campbell

SUBJECT: Sexual and Career Offenders

DATE: February 17, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends the sexual predator, sexual offender, and career offender registration laws to:

- Require a sexual predator or sexual offender who is enrolled, employed, or carrying on a vocation at a career center to provide to the Florida Department of Law Enforcement the name, address, and county of the institution, as well as additional information, and report any change in enrollment or employment status to the sheriff.
- Clarify language relating to qualifying prior felonies for the sexual predator designation.
- Add two offenses to the list of offenses for which a person can be designated as a sexual predator or sexual offender: selling or buying a minor into sex trafficking or prostitution; and sexual misconduct by a Department of Juvenile Justice (DJJ) program employee (or an employee of a program operated by a provider under a contract with the DJJ) with a juvenile offender detained or supervised by, or committed to the custody of, the DJJ.
- Clarify which particular provisions of the sexual offender registration law, alone or in combination with other provisions, qualify a person as a sexual offender under that law.
- Modify the registration requirement for sexual predators and sexual offenders so that the sheriff's office of the county in which the sexual predator resides is the sole location for registration.
- Clarify 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.

- Clarify the operational date for the career offender registration statute.

This bill substantially amends the following sections of the Florida Statutes: 775.21, 775.261, 943.0435, 944.606, and 944.607.

II. Present Situation:

“Sexual predator” criteria under s. 775.21(4), F.S.

Section 775.21(4), F.S., provides that an offender must be designated by a court as a “sexual predator,” who is subject to registration and community and public notification, if, under the sexual predator criteria, the offender has one current qualifying offense, one current qualifying offense and one prior qualifying offense, or has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under ch. 394, F.S.

An offender is designated as a sexual predator if the offender was convicted of the current offense, the offender committed or attempted to commit the offense on or after October 1, 1993, and the offense is any of the following capital, life, or first-degree felony offenses:

- Kidnapping (s. 787.01, F.S.) or false imprisonment (s. 787.02, F.S.) where the victim is a minor and the defendant is not the victim’s parent;
- Sexual battery (ch. 794, F.S.);
- Lewd/lascivious offenses committed upon or in the presence of a person less than 16 years of age (s. 800.04, F.S.);
- Selling or buying of minors for portrayal in a visual depiction of the minor engaging in sexually explicit conduct (s. 847.0145, F.S.); or
- A violation of a similar law of another jurisdiction.

An offender is also designated as a sexual predator if the offender was convicted of the current offense, the offender committed or attempted to commit the current offense on or after October 1, 1993, the current offense is a qualifying offense, and the offender has a prior qualifying offense. A current qualifying offense is any of the following offenses:

- Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim’s parent;
- Luring or enticing a child where the victim is a minor and the defendant is not the victim’s parent (s. 787.025, F.S.);
- Sexual battery (under ch. 794, F.S., but excluding s. 794.011(10), F.S., and s. 794.0235, F.S.);
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.);
- Lewd/lascivious offenses committed upon or in the presence of a person less than 16 years of age;

- Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult (s. 825.1025(2)(b), F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Selling or buying of minors for portrayal in visual depiction engaging in sexually explicit conduct; or
- A violation of a similar law of another jurisdiction.

To qualify as a prior qualifying offense,¹ the offender must have previously been convicted of or found to have committed or pled nolo contendere or guilty to, regardless of adjudication, the offense and the offense must be any of the following offenses:

- Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim's parent;
- Luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
- Sexual battery on a person less than 12 years of age (s. 794.011(2), F.S.); sexual battery on a person 12 years of age or older with threat of deadly weapon or physical force (s. 794.011(3), F.S.), under various circumstances (s. 794.011(4), F.S.), or without physical force or violence likely to cause serious personal injury (s. 794.011(5), F.S.); or soliciting a person less than 18 years of age to engage in sexual battery or committing sexual battery upon a person less than 12 years of age, if the person soliciting or engaging in the sexual battery is in a position of familial or custodial authority over the person;
- Unlawful sexual activity with certain minors (s. 794.05, F.S.);
- Procuring a person less than 18 years of age for prostitution (s. 796.03, F.S.);
- Lewd/lascivious offenses committed upon or in the presence of a person less than 16 years of age;
- Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult;
- Providing obscene material to a minor (s. 847.0133, F.S.);
- Computer pornography (s. 847.0135, F.S.);
- Selling or buying of minors for portrayal in a visual depiction of the minor engaging in sexually explicit conduct; or
- A violation of a similar law of another jurisdiction.

An offender is also designated as a sexual predator if the offender has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under ch. 394, F.S.

¹ A prior qualifying offense must also be a felony that resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it is not considered a prior if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later. s. 775.21(4)(b), F.S.

Registration requirements for sexual predators under s. 775.21, F.S.

Section 775.21(6), F.S., contains numerous registration requirements for persons who meet the definition of “sexual predator” under s. 775.21(4), 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 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 a 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 the FDLE, which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable website 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.

A sexual predator’s failure to comply with registration requirements is a third-degree felony. A sexual predator who has been convicted of one of 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.

Relevant to this analysis, s. 775.21(6)(a)1.b., F.S., requires a sexual predator who is enrolled, employed, or carrying on a vocation at an “institution of higher education”² in this state, to

² Section 775.21(2)(h), F.S., defines “institution of higher education” as “a community college, college, state university, or independent postsecondary institution.”

provide to the FDLE the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections (DOC) if the sexual predator is in the custody or control of or under the supervision of the DOC, within 48 hours after any change in status. The sheriff or the DOC shall promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status.

Date of release criterion applicable to career offender registration

Section 775.261, F.S., the Florida Career Offender Registration Act, requires a career offender to register in accordance with the requirements of that section. Relevant to this analysis, s. 775.261(2)(a), F.S., defines a "career offender" as any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084, F.S., or as a prison releasee reoffender under s. 775.082(9), F.S. Section 775.261(3), F.S., requires a career offender released on or after January 1, 2003, from a sanction imposed in this state for a designation as a habitual violent felony offender, a violent career criminal, a three-time violent felony offender, or a prison releasee reoffender, to register as provided.

Section 944.608, F.S., requires a career offender under the DOC's supervision but not incarcerated to register as provided. Section 944.608(1), F.S., defines a "career offender" as a person who is in the custody or control of, or under the supervision of, the DOC or a private correctional facility, and who is designated as a habitual violent felony offender, a violent career criminal, a three-time violent felony offender, or a prison releasee reoffender. The section does not specify a "start date" (in this circumstance, the earliest date upon which the person could have been in the custody or control of, or under the supervision of, the DOC or a private correctional facility and be subject to the requirements of the section). It appears the start date is interpreted as being July 1, 2002, which is the effective date of the legislation that created the section.³ In other words, the law is interpreted as applying to career offenders in the custody or control of, or under the supervision of, the DOC or a private correctional facility, on or after July 1, 2002.

"Sexual offender" definition under s. 943.0435(1), F.S.

Current law requires that certain persons who meet the definition of "sexual offender," as provided in s. 943.0435(1), F.S., must register as such according to the registration requirements of the section. Under this section, "sexual offender" means any of the three described persons:

- A person who has been released on or after October 1, 1997, from the sanction imposed in this state or any other jurisdiction for a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the following offenses proscribed in this state or similar offenses in another jurisdiction:
 - Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim's parent;

³ See CS/CS/CS/SBs 90 and 554 (ch. 2002-266, L.O.F.)

- Luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
 - Sexual battery (under ch. 794, F.S., but excluding s. 794.011(10), F.S. and s. 794.0235, F.S.);
 - Procuring a person less than 18 years of age for prostitution;
 - Lewd/lascivious offenses committed upon or in the presence of a person less than 16 years of age;
 - Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult;
 - Sexual performance by a child;
 - Providing obscene material to a minor;
 - Computer pornography;
 - Electronic transmission of child pornography (s. 847.0137, F.S.);
 - Electronic transmission to minors of material harmful to them (s. 847.0138, F.S.);
 - Selling or buying of minors for portrayal in a visual depiction of the minor engaging in sexually explicit conduct; or
 - Any similar offense committed in this state which has been redesignated from a former statute number and is one of the offenses previously described.
- A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.
 - A person who establishes or maintains a residence in this state and 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, any of the offenses previously described or any similar offense in another jurisdiction.

Registration requirements for sexual offenders under s. 943.0435, F.S.

Section 943.0435, F.S., contains numerous registration requirements for persons who meet the definition of "sexual offender" under s. 943.0435(1), F.S. A sexual offender is required to report and register in a manner similar to that required of a sexual predator.

Relevant to this analysis, s. 943.0435(4)(b), F.S., provides that a sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the FDLE or the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required as specified. The sexual offender must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

Also relevant to this analysis is the registration requirement provided in s. 943.0435(2)(b)2., F.S., which requires a sexual offender who is enrolled, employed, or carrying on a vocation at an institution of higher education⁴ in this state, to provide to the FDLE the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at an office of the FDLE, or at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

“Sexual offender” definition under s. 944.607(1), F.S.

Section 944.607(1), F.S., requires the DOC to notify the FDLE of information regarding certain persons who meet the definition of “sexual offender” in s. 944.607(1), F.S. Section 944.607(1), F.S., provides that, as used in the section, “sexual offender” means either of the following persons:

- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the offenses previously described in the explanation of s. 943.0435(1), F.S.
- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility and who establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.

Registration requirements for sexual offenders under s. 944.607(4)(b), F.S.

Section 944.607(4), F.S., contains numerous registration requirements for persons who meet the definition of “sexual offender” under s. 944.607(1), F.S. A sexual offender is required to report and register in a manner similar to that required of a sexual predator.

Relevant to this analysis, s. 944.607(4)(b), F.S., provides that a sexual offender who is under the supervision of the DOC but not incarcerated and who is enrolled, employed, or carrying on a vocation at an institution of higher education⁵ in this state, shall provide to the DOC the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported to the DOC within 48 hours after the change in status. The DOC shall promptly

⁴ Section 943.0435(1)(d), F.S., defines “institution of higher education.” This definition is identical to the definition of that term in s. 775.21(2)(h), F.S. (See Note 2.)

⁵ Section 944.607(1)(c), F.S., defines “institution of higher education.” This definition is identical to the definition of that term in s. 775.21(2)(h), F.S. (See Note 2.)

notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

Career Centers

According to the FDLE, “[i]n accordance with the Federal Jacob Wetterling Act,⁶ specifically the amendments to that act under the Campus Sex Crimes Prevention Act,⁷ sexual predators and offenders who are enrolled or employed at an institution of higher education must report such enrollment or employment or any change thereof to the state sex offender registry. Florida educational statutes were changed during the 2004 Regular Session (HB 769, General Laws, Chapter 2004-357) revising terminology relating to some such institutions under the term ‘career center.’”

Current definitions of “institution of higher education” in ss. 775.21, 943.0435, and 944.607, F.S., do not refer to a “career center.”

III. Effect of Proposed Changes:

The bill amends the definition of “institution of higher education” in ss. 775.21, 943.0435, and 944.607, F.S., to include a “career center.” As a result, a sexual predator or sexual offender who is enrolled, employed, or carrying on a vocation at a career center is required to provide to the Florida Department of Law Enforcement (FDLE) the name, address, and county of the institution, as well as additional information, and is required to report any change in enrollment or employment status to the sheriff or the Department of Corrections (DOC), as applicable. The sheriff or the DOC, as applicable, is required to notify the career center when a sexual offender or sexual predator is employed or enrolled there. According to the FDLE, the change to the definition of “institution of higher education” is intended to ensure compliance with the federal Campus Sex Crimes Prevention Act.

The bill also amends s. 775.21, F.S., to clarify language relating to qualifying prior felonies for the sexual predator designation and to provide that the local sheriff is the sole location for sexual predators to report a change in residence.

The bill adds two offenses to the list of offenses for which a person can be designated as a sexual predator under the section, and amends ss. 943.0435, 944.606, and 944.607, F.S., to add those offenses to the list of offenses for which a person may qualify as a sexual offender under those sections. The offenses pertain to selling or buying a minor into sex trafficking or prostitution and sexual misconduct by a Department of Juvenile Justice (DJJ) program employee (or an employee of a program operated by a provider under a contract with the DJJ) with a juvenile offender detained or supervised by, or committed to the custody of, the DJJ.

The bill also amends s. 943.0435, F.S., to clarify which particular provisions alone or in combination with other provisions qualify a person as a sexual offender under that section.

⁶ 42 USC § 14071.

⁷ Pub. L. 106-386; 42 USC § 14071(j).

The bill also amends ss. 775.21, 943.0435, and 944.607, F.S., to clarify 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.”

The bill also amends s. 775.261, F.S., to provide that that section applies to career offenders released on or after July 1, 2002, from a sanction imposed in this state for a designation as a habitual violent felony offender, a violent career criminal, a three-time violent felony offender, or a prison releasee reoffender. Currently, the applicable release date is “on or after January 1, 2003.” The FDLE indicates that this change will reconcile the “start date” in s. 775.261, F.S., with the “start date” in s. 944.608, F.S. Other clarifying changes are made to delete redundant and confusing language.

The bill takes effect July 1, 2006.

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:

The Florida Department of Law Enforcement (FDLE) indicates that the changes made by the bill to the sexual offender and sexual predator registration laws will have a minor impact on the functions of the respective registries. The FDLE 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.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

In *Therrien v. State*, the Florida Supreme Court ruled that s. 775.21(5)(a)2., F.S., does not authorize imposition of a sexual predator designation on a defendant based upon an offense that did not qualify the defendant for sexual predator status *at the time of sentencing*.⁸ The court based its ruling on its interpretation of the legislative intent as determined “primarily from the language of the statute.”⁹ Specifically, the court found that the use of the phrase “who is before the court for sentencing for a *current* offense”¹⁰ provided that the date of sentencing for crimes qualifying for predator designation was the point at which eligibility for sexual predator status is to be determined for offenders.¹¹ If the Legislature intended to provide for the retroactive application of this civil statute, it may wish to revise existing language to clarify its intent.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁸ 914 So. 2d 942, 944 (Fla. 2005).

⁹ *Id.* at 945.

¹⁰ Section 775.21(5)(a)2, F.S. (emphasis added).

¹¹ *Therrien*, 914 So. 2d at 947.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
