

The Florida Senate
PROFESSIONAL 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/CS/SB 1604

INTRODUCER: Judiciary Committee, Criminal Justice Committee and Senator Argenziano

SUBJECT: Sexual Offenders and Predators

DATE: April 11, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	Luczynski	Maclure	JU	Fav/CS
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill makes changes to Florida's laws regarding registration of sexual predators and sexual offenders to comply with the Federal Adam Walsh Child Protection and Safety Act of 2006¹ ("Adam Walsh Act"), as well as making other changes necessary to effectuate implementation of the registration laws. The major features of the bill include:

- *Expands the population of offenders required to register to include some juveniles adjudicated delinquent of certain crimes.* A juvenile who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting or conspiring to commit, sexual battery or some types of lewd battery or lewd molestation or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense is required to register as a sexual offender. *This requirement is a significant change to Florida's registration laws.*
- Provides that a person who was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S. (sexual battery), or s. 800.04, F.S. (lewd offenses), or who has committed such violation for which adjudication of guilt was or will be withheld, may move or petition a court for removal of the requirement to register as a sexual predator or sexual offender if other initial criteria are met and removal of the registration requirement will not conflict with federal law. The court may grant the motion or petition if the person meets initial criteria and removal of the registration requirement will not conflict with federal law. If the person is required to register pursuant to the Adam Walsh Act, the court will have to make a finding that consensual sexual conduct occurred so that the removal of the registration requirement does not conflict with the federal act.

¹ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, 120 Stat 587 (2007).

- Sexual predators and certain sexual offenders will be required to report in person at the sheriff's office every three months, rather than every six months.
- Sexual predators and certain sexual offenders will be required to maintain registration for life without the possibility of petitioning for removal of the registration requirement.
- Local law enforcement agencies, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) will be required to report to the Florida Department of Law Enforcement (FDLE) the failure of a sexual predator or sexual offender to comply with registration requirements.
- The FDLE will be required to develop and maintain a system to provide automatic notification of registration information regarding sexual predators and sexual offenders to the public. Schools, public housing agencies, agencies responsible for conducting employment-related background checks, social service entities responsible for protecting minors in the child welfare system, and certain other organizations will have access to this system.

This bill substantially amends the following sections of the Florida Statutes: 775.21, 943.0435, 943.0515, 944.606, 944.607, 985.04, 985.045, and 921.0022. This bill also creates the following sections of the Florida Statutes: 943.04354, 943.44353, 985.481, and 985.4815.

II. Present Situation:

A. *Sexual predator criteria*: As of February 15, 2007, there were 6,238 sexual predators in the state registry. The following persons are required to register as a sexual predator.²

1. A person who is convicted³ of a current offense that was committed on or after October 1, 1993, that is a capital, life, or first-degree felony offense, or the attempt to commit the offense, and that involves kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim's parent, or of sexual battery, a lewd offense committed upon or in the presence of a person less than 16 years of age, or the selling or buying of minors (for illegal sexual depictions), or a violation of a similar law of another jurisdiction.
2. A person who meets both Factor 1 *and* Factor 2.

Factor 1: The person is convicted of a current felony offense committed on or after October 1, 1993, and the felony is any of the following offenses, or the attempt to commit any of these offenses:

- Kidnapping, false imprisonment, or an adult luring or enticing a child/prior conviction for sexual battery or a lewd offense, where the victim is a minor and the defendant is not the victim's parent;
- A sexual battery offense, excluding the offenses of falsely accusing a law enforcement officer or other specified officer of committing sexual battery and failure/refusal to comply with chemical castration requirements;

² Section 775.21(4), F.S.

³ Section 775.21(2), F.S., defines "conviction" as "a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld."

- Procuring a person under age 18 for prostitution;
- Selling or buying minors into sex trafficking or prostitution;
- A lewd offense against a child victim (as previously described);
- Lewd battery on an elderly or disabled person;
- Using a child in a sexual performance or promoting such performance;
- Selling or buying of minors (for illegal sexual depictions);
- A Department of Juvenile Justice (DJJ) employee engaging in sexual misconduct with a juvenile offender; or
- A violation of a similar law of another jurisdiction, *and*

Factor 2: The person has previously been convicted of or found to have committed, or has pled *nolo contendere* or guilty to, regardless of adjudication, any of the following felony offenses:

- Kidnapping, false imprisonment, or luring (as previously described), where the victim is a minor and the defendant is not the victim's parent;
- Any of several specified sexual battery offenses under s. 794.011, F.S.;
- Unlawful sexual activity with certain minors;
- Procuring a person under age 18 for prostitution;
- Selling or buying minors into sex trafficking or prostitution;
- A lewd offense against a child (as previously described);
- A lewd offense committed upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Knowingly selling/transmitting obscene material to a minor;
- Computer pornography/online solicitation of a minor to commit certain illegal sexual acts;
- Selling or buying of minors (for illegal sexual depictions);
- A DJJ employee engaging in sexual misconduct with a juvenile offender; or
- A violation of a similar law of another jurisdiction.

3. A person who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under ch. 394, F.S.

- B. *Sexual predator registration*: If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (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 sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.⁴

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

⁴ Section 775.21(6)(e), F.S.

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 Florida Department of Law Enforcement (FDLE), which maintains the statewide registry of all sexual predators and sexual offenders. The FDLE maintains a searchable website containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

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 re-register.

C. *Sexual offender criteria:* As of February 15, 2007, there were 33,989 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 was committed.⁵ Specifically, a sexual offender⁶ is:

1. A person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the following offenses in this state or similar offenses in another jurisdiction and has been released on or after October 1, 1997, from the sanction imposed for any conviction of such offense:
 - Kidnapping, false imprisonment, or an adult luring or enticing a child and the adult has a prior conviction for sexual battery or a lewd offense, where the victim is a minor and the defendant is not the victim's parent;
 - A sexual battery offense, excluding the offenses of falsely accusing a law enforcement officer or other specified officer of committing sexual battery and failure/refusal to comply with chemical castration requirements;
 - Procuring a person under age 18 for prostitution;
 - Selling or buying minors into sex trafficking or prostitution;
 - A lewd offense against a child (as previously described);
 - A lewd offense against an elderly or disabled person (as previously described);
 - Using a child in a sexual performance or promoting such performance;
 - Knowingly selling/transmitting obscene material to a minor;
 - Computer pornography/online solicitation of a minor to commit certain illegal sexual acts;
 - Knowing electronic transmission of pornography to a minor;
 - Knowing electronic transmission to a minor of material harmful to minors;
 - A DJJ employee engaging in sexual misconduct with a juvenile offender; or
 - Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed here.

⁵ Some of the other requirements or prohibitions unique to sexual predators are: a designation by a court that the person is a sexual predator, a prohibition on working or volunteering in places where children regularly congregate, and a longer period (for some sexual predators) to qualify to petition for removal of the registration requirement.

⁶ Section 943.0435(1)(a), F.S.

2. A person 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, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.
 3. A person who establishes or maintains a residence in this state and 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.
 4. 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 or 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 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, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.
- D. *Sexual offender registration*: A sexual offender is required to report and register in a manner similar to a sexual predator.
- E. *Exclusions from the requirement to register as a sexual predator or sexual offender*: Questions have been raised as to whether Florida's registration laws apply to acts like public urination or "streaking." The offenses applicable to these acts are typically punished as disorderly conduct or another misdemeanor offense, which are not qualifying offenses for registration. To punish these acts as felony lewd exhibition, a qualifying offense for registration, the State would have to prove the act involved committing any of the following acts in the presence of a victim who is less than 16 years of age: intentional masturbation, intentional exposure of the genitals in a lewd or lascivious manner,⁷ or the intentional commission of any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.

Generally, juveniles are not required to register. The exception is when a juvenile is treated as an adult and "convicted" of a sexual offense or offenses that require him or her to register.

⁷ The terms "lewd" and "lascivious" are not statutorily defined terms but the courts have determined what these terms mean based on their generally understood meaning. "Generally speaking, ... these words, when used in a statute to define an offense, usually have the same meaning, that is, an unlawful indulgence in lust, eager for sexual indulgence." *Buchanan v. State*, 111 So. 2d 51, 57 (Fla. 1st DCA 1959).

A person does not have to register if the person has received a pardon for any felony or similar law of another jurisdiction that is necessary to qualify for registration or if the person has had a conviction for a felony or similar law of another jurisdiction necessary to qualify set aside in any postconviction proceeding.

Additionally, in order to be counted as a prior felony for purposes of the sexual predator criteria, the felony must have 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 regardless of the date of offense of the prior felony.

- F. *Duration of the requirement to register as a sexual predator:*⁸ A sexual predator must maintain registration with the FDLE for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for the sexual predator designation. However, a sexual predator who was designated as a sexual predator by a court:
- Before October 1, 1998, and who has been lawfully released from confinement, supervision, or sanction, whichever is later, *for at least 10 years* and has not been arrested for any felony or misdemeanor offense since release, may petition to have the sexual predator designation removed.
 - On or after October 1, 1998, who has been lawfully released from confinement, supervision, or sanction, whichever is later, *for at least 20 years* and who has not been arrested for any felony or misdemeanor offense since release, may petition to have the sexual predator designation removed.
 - On or after September 1, 2005, who has been lawfully released from confinement, supervision, or sanction, whichever is later, *for at least 30 years* and who has not been arrested for any felony or misdemeanor offense since release, may petition to have the sexual predator designation removed.
- G. *Duration of the requirement to register as a sexual offender:*⁹ A sexual offender must maintain registration with the FDLE for the duration of his or her life, unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a person may petition for removal of the registration requirement if:
- The person has been lawfully released from confinement, supervision, or sanction, whichever is later, *for at least 20 years* and has not been arrested for any felony or misdemeanor offense since release, *or*
 - The person was 18 years of age or under at the time the offense was committed and the victim was 12 years of age or older and adjudication was withheld for that offense, the person is released from all sanctions, *10 years have elapsed since the person was placed on probation*, and the person has not been arrested for any felony or misdemeanor offense since the date of conviction of the qualifying offense.

⁸ Section 775.21(6)(l), F.S.

⁹ Section 943.0435(11), F.S.

An exception is the person who resides in this state and is required to register as a sexual offender because of a designation in another state or jurisdiction. This person must maintain registration with the FDLE for the duration of his or her life until the person provides the department with an order issued by the court that made the designation which states that the designation has been removed or demonstrates to the department that the designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided the person no longer meets the criteria for registration as a sexual offender under the laws of this state.

- H. *Adam Walsh Child Protection and Safety Act of 2006*:¹⁰ In July 2006, the Federal Adam Walsh Child Protection and Safety Act of 2006 became law and imposed a number of requirements on state sexual offender registries. The law designates people who have committed a sexual offense into three categories based on the offense committed by the offender – Tier I, Tier II, and Tier III. As discussed in Section III, Effect of Proposed Changes, the “tier” designation of an offender is relevant to how long the offender is required under the federal legislation to stay on a state’s registry and how often the offender is required to re-register in person. Generally, a Tier III offender is one who has committed what could be considered a more serious or violent offense than a Tier I or Tier II offender.¹¹

III. Effect of Proposed Changes:

The major features of the bill are described as follows:

- *Requires sexual offender registration for adjudications of delinquency for certain specified offenses. Delinquents are not required to register under current state law. This requirement is a significant change to Florida’s registration laws.*¹² According to earlier estimates provided by the Department of Juvenile Justice (DJJ), this provision was estimated to affect 50 juveniles adjudicated delinquent of sexual battery and 146 juveniles adjudicated delinquent of lewd offenses. Purpose: Compliance with Section 111(8) of the Adam Walsh Act that provides:¹³

CONVICTED AS INCLUDING CERTAIN JUVENILE
ADJUDICATIONS.--The term “convicted” or a variant thereof, used with
respect to a sex offense, includes adjudicated delinquent as a juvenile for

¹⁰ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, 120 Stat 587 (2007).

¹¹ Section 111(4), of the Adam Walsh Child Protection and Safety Act of 2006, defines a “Tier III Sex Offender” as a sex offender whose offense is punishable by imprisonment for more than one year and the offense is comparable to or more severe than the following offenses (or attempt or conspiracy to commit such offenses): aggravated sexual abuse or sexual abuse (18 USC s. 2244); abusive sexual contact (*id.*) against a minor 12 or younger; kidnapping of a minor (unless committed by a parent or guardian); or occurs after the offender becomes a Tier II sexual predator.

¹² The Senate Criminal Justice Committee examined the definition of juvenile sex offender in ch. 985, F.S., and the impact of registration on juveniles. Criminal Justice Comm., Fla. Senate, *Examine the Definition of “Juvenile Sexual Offender” in Chapter 985, F.S.* (Interim Project Report 2007-108) (Oct. 2006), http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-108cj.pdf.

¹³ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 111(8), 120 Stat 587 (2007).

that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.¹⁴

Relevant sections of the bill: 2, 10, 11. Sections amended/created: s. 943.0435, F.S.; s. 985.481, F.S. (created); s. 985.4815, F.S. (created).

To comply with the Adam Walsh Act, the bill provides that on or after July 1, 2007, if a person has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the following criminal offenses or similar offenses in another jurisdiction when the person was 14 years of age or older at the time of the offense, the person is required to register as a sexual offender:

- Sexual battery under s. 794.011, F.S. (excluding a false accusation offense).
- Lewd battery where the victim is under 12 or where the court finds sexual activity by the use of force or coercion.
- Lewd molestation (offender under 18 and victim under 12) where the court finds molestation involving unclothed genitals.
- Lewd molestation (offender under 18 and victim 12-15 years of age) where the court finds the use of force or coercion and unclothed genitals.

For the violations above, as well as for each violation of a sexual offender qualifying offense in s. 943.0435, F.S., the bill requires the court to make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), F.S. the court is required to make a written finding indicating that the offense did or did not involve sexual activity and indicating that the offense did or did not involve force or coercion. For a violation of s. 800.04(5), F.S., the court must make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion. The bill does not indicate the standard by which the court must make these findings. Furthermore, as most of these factual matters are not elements of the underlying criminal offense, it is not clear whether the bill intends that the court will make its finding based on an evidentiary hearing on these factual matters.

- *Excludes individuals convicted of certain offenses with specified criteria from registration requirements.* Purpose: Attempts to address concerns about the registration of some youthful sexual offenders (sometimes described as the “Romeo and Juliet” group), while complying with registration requirements of the Adam Walsh Act. Relevant section of the bill: 3. Section created: s. 943.04354, F.S.

¹⁴ Currently, Florida law provides that a minor who is sentenced as an adult for a qualifying sexual offense must register as a sexual offender. However, a minor who is adjudicated delinquent for a sexual offense is not required to register as a sexual offender.

A person can petition for removal of the requirement to register as a sexual offender or sexual predator if the person meets the following initial criteria and the removal of the registration requirement will not conflict with federal law:

- The person was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S. (sexual battery) or s. 800.04, F.S. (lewd offenses), or has committed a violation of either statute for which adjudication was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of s. 794.011, F.S., or s. 800.04, F.S.;
- The person is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- The person is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

If the violation of s. 794.011, F.S., or s. 800.04, F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the registration requirement.¹⁵ The state attorney must be given notice 21 days before the date of sentencing or disposition of this violation, and may oppose the motion. At sentencing or disposition of this violation, the court shall rule on this motion, and if the court determines the person meets the initial criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized under s. 943.04354, F.S., to petition for removal of the registration requirement.

A person who meets the initial criteria may, and probably will be, subject to requirements of the federal Adam Walsh Act to register. However, Section 111(5)(C) of the Adam Walsh Act¹⁶ provides that offenses involving consensual sexual conduct are not sex offenses for purposes of the federal act given certain provisions and the age of the offender and the victim. Therefore, insofar as not conflicting with the Adam Walsh Act, the court hearing the motion would be required to determine that the violation involved consensual sexual conduct.

Similar provisions are provided for persons who would meet the initial criteria, except that their violation was not committed on or after July 1, 2007 (e.g., persons incarcerated or on supervision for a violation committed before July 1, 2007 and persons who have already served their sentence or disposition for the violation).¹⁷ These persons petition for removal of the registration requirement in the court in which the sentence or disposition for the violation occurred. Notice to the state attorney is provided at least 21 days before the hearing on the petition. In all other respects the procedures are the same as previously described.

¹⁵ For this group, a public defender will be available to provide representation.

¹⁶ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 111(5)(C), 120 Stat 587 (2007).

¹⁷ These persons are no longer represented by a public defender and would either have to retain private counsel to file the petition or file the petition pro se.

- *Includes the term “guardian” in addition to “parent,” in certain crime definitions.* Purpose: Compliance with Section 111(3)(B) of the Adam Walsh Act,¹⁸ which includes the terms “guardian” and “parent” in specified offense language. Relevant sections of the bill: 1; 2; 6; 7. Sections amended: s. 775.21, F.S.; s. 943.0435, F.S.; s. 944.606, F.S.; s. 944.607, F.S.
- *Excludes several offenses that do not involve sexual activity from the list of qualifying offenses for registration as a sexual offender.* Purpose: The definition of the term “sexual offender” in s. 943.0435, F.S., and s. 944.607, F.S., currently excludes offenses contained within ch. 794, F.S., which do not involve sexual activity, such as falsely accusing a person of sexual battery and refusing to comply with a court order relating to chemical castration. The exclusion of several additional offenses that do not involve sexual activity is consistent with the current exclusions. Relevant sections of the bill: 3; 7. Sections amended: s. 943.0435, F.S.; s. 944.607, F.S.
- *Clarifies that sexual offender/predator registration with the Florida Department of Law Enforcement (FDLE) occurs through the sheriff’s office.*¹⁹ Purpose: Provides clarification that the FDLE registration physically takes place at the sheriff’s office. According to the FDLE, this clarification was requested in order to assist courts with jury instructions. Relevant sections of the bill: 1; 2. Sections amended: s. 775.21, F.S.; s. 943.0435, F.S.
- *Requires a sexual predator not under the Department of Corrections (DOC) supervision or incarcerated to register at the sheriff’s office in the county where he or she maintains a residence and in the county where he or she was designated as a sexual predator within 48 hours of sentencing. Currently, a sexual predator only registers in the county of residence. Requires that a sexual offender not under DOC supervision or incarcerated register at the sheriff’s office in the county where he or she was convicted of the sexual offense within 48 hours of conviction. Currently, the location of the sheriff’s office is not specified.* Purpose: Compliance with Section 113(b)(2) of the Adam Walsh Act,²⁰ which requires that a sex offender not sentenced to a term of imprisonment register not later than 3 business days after being sentenced. Relevant sections of the bill: 1; 2. Sections amended: s. 775.21, F.S.; s. 943.0435, F.S.
- *Amends s. 775.21, F.S., to remove the ability of a sexual predator to petition for removal of the sexual predator designation under that section.*²¹ Purpose: Compliance with Section 115(a)(3) of the Adam Walsh Act,²² which requires Tier III sex offenders to register for life. Relevant section of the bill: 1. Section amended: s. 775.21, F.S.

¹⁸ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 111(3)(B), 120 Stat 587 (2007).

¹⁹ In order to comply, the bill requires a sexual predator to register in person at the sheriff’s office in the county where he or she establishes or maintains a residence in this state and at the sheriff’s office in the county where he or she is designated a sexual predator by the court within 48 hours after such finding is made. A sexual offender not in the custody or control of, or under the supervision of, the DOC, or not in the custody of a private correctional facility, must register in person in the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration.

²⁰ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 113(b)(2), 120 Stat 587 (2007).

²¹ However, the bill does provide for an expedited petition process for some sexual predators to seek removal of the registration requirement. *See* Section III, Effect of Proposed Changes for a description.

²² Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 115(a)(3), 120 Stat 587 (2007).

- *Amends s. 943.0435, F.S., to increase from 20 years to 25 years the period of time that must elapse before a sexual offender may petition the court for a removal of the offender designation under that section,²³ and for adult sexual offenders convicted of specified crimes, removes the ability to petition for removal of the designation under that section.²⁴ Purpose: Compliance with Section 115(a)(2) of the Adam Walsh Act,²⁵ which requires Tier II sex offenders to register for a minimum of 25 years. Relevant section of the bill: 2. Section amended: s. 943.0435, F.S.*
- *Requires the DOC to report the failure of a sexual predator/offender on supervision to comply with registration requirements.²⁶ Purpose: Compliance with Section 122 of the Adam Walsh Act,²⁷ which requires an appropriate official to notify the U.S. Attorney General and appropriate law enforcement agencies of any failure by a sex offender to comply with requirements of a registry and revise the jurisdiction's registry to reflect the nature of that failure. Relevant sections of the bill: 1; 7. Sections amended: s. 775.21, F.S.; s. 944.607, F.S.*
- *Requires local law enforcement to report the failure of a sexual predator/offender not under DOC supervision to comply with registration requirements. There is no current requirement in Florida law to make such report. Purpose: Compliance with Section 122 of the Adam Walsh Act (see description above). Relevant sections of the bill: 1; 2. Sections amended: s. 775.21, F.S.; s. 943.0435, F.S.*
- *Increases the re-registration requirement for sexual predators and certain sexual offenders with specified crimes to four times annually, rather than biannually.²⁸ Purpose: Compliance with Section 116(3) of the Adam Walsh Act,²⁹ which requires in-person quarterly registration of offenders meeting Tier III criteria. Relevant sections of the bill: 1; 2; 7; 11. Sections amended/created: s. 775.21, F.S.; s. 943.0435, F.S.; s. 944.607, F.S.; s. 985.4815, F.S. (created).*
- *Provides immunity for the DJJ. Purpose: Section 111(8) of the Adam Walsh Act requires certain individuals who are adjudicated delinquent to register as sexual offenders.³⁰ The bill extends the same immunity from damages to the DJJ, which is currently provided to the FDLE, the DOC, the DHSMV, and law enforcement agencies for good faith compliance with*

²³ Juveniles adjudicated delinquent and required to register as sexual offenders will also be required to maintain registration for 25 years before being eligible to petition the court for removal. However, the bill does provide for an expedited petition process for some of these juveniles (as well as some convicted juveniles and adults) to seek removal of the registration requirement. *See* Section III, Effect of Proposed Changes for a description.

²⁴ This section also removes a current provision that allows for a petition for removal of the registration requirement where the sexual offender was 18 years of age or younger at the time the sexual offense was committed and the victim was 12 years of age or older and adjudication was withheld for that offense; 10 years have elapsed since the offender was placed on probation; and the offender has not been arrested for any felony or misdemeanor since the date of conviction of that offense. Section 943.0435(11)(b), F.S.

²⁵ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 115(a)(2), 120 Stat 587 (2007).

²⁶ Currently, the DOC is required to verify the addresses of sexual predators who are under supervision.

²⁷ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 122, 120 Stat 587 (2007).

²⁸ The four times annual re-registration requirement applies to Tier III sex offenders. All non-Tier III sex offenders are subject to the biannual requirement.

²⁹ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 116(3), 120 Stat 587 (2007).

³⁰ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 111(8), 120 Stat 587 (2007).

the requirements of the registration laws and release of related information. Relevant sections of the bill: 1; 2; 7. Sections amended: s. 775.21, F.S.; s. 943.0435, F.S.; s. 944.607, F.S.

- *Broadens the term “convicted” as it applies to sexual offender registration, to include an adjudication of delinquency.* Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant sections of the bill: 2; 10; 11. Sections amended/created: s. 943.0435, F.S.; s. 985.481, F.S. (created); s. 985.4815, F.S. (created).
- *Requires the FDLE to develop an automatic notification system for the public.* Purpose: Compliance with Section 121 of the Adam Walsh Act,³¹ which requires states to establish a system through which automated notifications may be sent to those individuals and agencies mandated under the federal act. Relevant section of the bill: 4. Section created: s. 943.44353, F.S.
- *Requires the Criminal Justice Information Program to retain the criminal history of minors who are adjudicated delinquent of certain crimes.*³² Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant section of the bill: 5. Section amended: s. 943.0515, F.S.
- *Requires jails to register sexual offenders in the jail’s custody within 3 business days of intake for any reason and upon release.* Purpose: Compliance with Section 113(b)(1) of the Adam Walsh Act,³³ which requires that a sex offender sentenced to a term of imprisonment register before completing a sentence of imprisonment. Relevant sections of the bill: 6; 7; 10; 11. Sections amended/created: s. 944.606, F.S.; s. 944.607, F.S.; s. 985.481, F.S. (created); s. 985.4815, F.S. (created).
- *Requires the clerk of court to ensure that a sexual offender registration is completed for an offender not sentenced to a term of imprisonment.* Purpose: Compliance with Section 117(a) of the Adam Walsh Act,³⁴ which provides that an official shall, before an offender’s release from custody, or immediately after sentencing if the offender is not in custody, inform the sex offender of his/her duty to register, require the completion of a form, and require the registration of the offender. Relevant sections of the bill: 7; 11. Sections amended/created: s. 944.607, F.S.; s. 985.4815, F.S. (created).

³¹ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 121, 120 Stat 587 (2007).

³² Pursuant to s. 943.0515, F.S., the Criminal Justice Information Program within FDLE is required to retain the criminal history record of a minor who is classified as a serious or habitual juvenile offender or is committed to a juvenile correctional facility for 5 years after the date the offender reaches 21 years of age. The criminal history records of other minors must be retained for 5 years after the date the minor reaches the age of 19. If a person 18 years of age or older is charged with a forcible felony and the person’s criminal history record as a minor has not yet been destroyed or if a minor is adjudicated as an adult for a forcible felony, the person’s record as a minor must be merged with the adult’s criminal history record and retained. The bill provides that the Criminal Justice Information Program must retain the criminal history record of a minor required to register as a sexual offender based on an adjudication of delinquency (see footnotes 12-14 and related text). These records shall not be destroyed and must be merged with the person’s adult criminal history records and retained as a part of the person’s adult record.

³³ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 113(b)(1), 120 Stat 587 (2007).

³⁴ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 117(a), 120 Stat 587 (2007).

- *Requires a sexual offender under supervision to register with the DOC or the DJJ, as appropriate, within 3 business days after sentencing for a registerable offense.* Purpose: Compliance with Section 113(b)(2) of the Adam Walsh Act, which require that a sex offender not sentenced to a term of imprisonment register within 3 days after being sentenced.³⁵ Relevant sections of the bill: 7; 11. Sections amended/created: s. 944.607, F.S.; s. 985.4815, F.S. (created).
- *Broadens the definition of “sanction” to be inclusive of those related to adjudications of delinquency.* Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant sections of the bill: 2; 10; 11. Sections amended/created: s. 943.0435, F.S.; s. 985.481, F.S. (created); s. 985.4815, F.S. (created).
- *Requires the FDLE to provide information to the public regarding the release of certain sexual offenders who are adjudicated delinquent of certain crimes.*³⁶ Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant section of the bill: 2. Section amended: s. 943.0435, F.S.
- *Requires the DJJ to compile and provide to the FDLE information on sexual offenders as defined under their care, and defines the information to be provided.* Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant sections of the bill: 10; 11. Sections created: s. 985.481, F.S.; s. 985.4815, F.S.
- *Provides provisions for sexual offenders adjudicated delinquent of certain crimes who are required to register and who are under federal supervision.* Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant section of the bill: 11. Section created: s. 985.4815, F.S.
- *Imposes registration requirements upon sexual offenders adjudicated delinquent of certain crimes.*³⁷ Purpose: Compliance with Section 111(8) of the Adam Walsh Act (see description above). Relevant sections of the bill: 2; 10; 11. Sections amended/created: s. 943.0435, F.S.; s. 985.481, F.S. (created); s. 985.4815, F.S. (created).
- *Provides that offenses relating to failure or noncompliance with sexual offender registration requirements and harboring sexual offenders will also apply to juveniles adjudicated delinquent who are required to register.* Purpose: Provides for consistent application of enforcement provisions of the registration laws. Relevant section of the bill: 11. Section created: s. 985.4815, F.S.

³⁵ Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 113(b)(2), 120 Stat 587 (2007).

³⁶ The bill requires the DJJ to provide information to the FDLE regarding minors who are being released after serving a period of residential commitment and who are required to register as a sexual offender based on an adjudication of delinquency. The DJJ will be required to provide the FDLE with the same information relating to sexual offenders as DOC is required to provide regarding adult offenders being released pursuant to s. 944.606, F.S.

³⁷ The bill requires a minor who is required to register as a sexual offender based on an adjudication of delinquency to report to the sheriff's office and the DHSMV as required under s. 943.0435, F.S., for adult sexual offenders. This minor will also be required to report in person to the sheriff's office every 3 months.

The bill provides that it takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Juvenile Justice states:

The proposed legislation may raise constitutional due process challenges. Juveniles charged with committing delinquent offenses are not afforded the full due process rights as are adults charged with criminal offenses. The courts have permitted this lesser standard because the juvenile system is primarily rehabilitative as opposed to punitive. To the extent that this legislation imposes a lifetime registration requirement upon someone who may be convicted without full due process, [it] may give rise to a challenge to the legislation or the juvenile system.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Juvenile Justice (DJJ) states that the private sector impact will be minimal, if any. Private providers may have a non-fiscal cost associated with having to verify registration of youth as sexual offenders prior to release from their program.

C. Government Sector Impact:

The DJJ, the Florida Department of Law Enforcement (FDLE), and the Department of Corrections (DOC) indicated the following costs for HB 665, the similar House companion to SB 1604:

Agency	FY 2007-08	FY 2008-09	FY 2009-10
DJJ	\$679,670	\$331,470	\$331,470
FDLE	\$607,734	\$351,182	\$351,182
DOC	\$98,600	\$19,720	\$19,720
Total	\$1,386,004	\$702,372	\$702,372

DJJ information regarding costs:

Total non-recurring costs for FY 2007-08 are \$348,200 (non-recurring costs for FY 2008-09 and thereafter are unknown). The non-recurring costs for FY 2007-08 include: MIS Development/Integration with JJIS (\$91,200), Equipment (Digital Cameras, OCO) (\$32,000), and Training Cost (\$225,000). Total recurring costs are estimated to be \$331,470 and consist of 3 FTEs (3 Sr. Probation Officers/1 per region).

FDLE information regarding costs:

Total non-recurring costs for FY 2007-08 are \$256,552 (no non-recurring costs thereafter are noted). Total recurring costs are \$351,182. Total costs for FY 2007-08 are \$607,734 and consist of \$99,634 for 2 FTE Analysts (CIAI, GAI) and \$508,100 for system programming and maintenance (thereafter, recurring costs are \$351,182: \$90,182 for the 2 FTEs and \$261,000 for system programming and maintenance).³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted in the Florida Department of Law Enforcement (FDLE) analysis:

There are potential implementation issues surrounding the placement of juvenile sex offenders within schools. A workgroup from FDLE, DJJ and DOE will explore initial implementation issues.

Reference Department of Juvenile Justice (DJJ) Analysis of bill dated February 22nd: DJJ notes a concern that implementation of the requirements of the Walsh Act prior to the distribution of federal guidelines and implementation of federal software may be premature. Discussions with Federal compliance authorities confirm that language and offenses included are required regardless of the timeline for federal software development or issuance of pending federal guidelines. The components of the offenses for which registration is required are specifically detailed in federal law and will not be amended in the implementation guidelines to the states. Additionally the software referenced will be a tool for communication from the states' registries to the federal registry and has no impact upon which offenses or method of registration Florida uses or will implement.

³⁸ A more detailed cost breakdown for the DJJ and the FDLE is available in their fiscal analyses.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
