

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Sexual Offenders and Predators

SPONSOR(S): Adams

TIED BILLS: **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	_____	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill will make various changes to the state sexual predator and sexual offender registry statutes in order to further compliance with the provisions of the federal Adam Walsh Act. The bill:

- Requires sexual predators and sexual offenders to provide additional information as part of the statewide registry.
- Provides that the offense of felony video voyeurism where the victim was a minor will be a qualifying offense for sexual predator or sexual offender registration.
- Requires sexual predators and sexual offenders to provide information regarding his or her transient residence.
- Requires sexual predators and sexual offenders to submit palm prints as part of the registry process.
- Requires the reporting of employment information and information regarding any vehicle, vessel or aircraft that the sexual predator or sexual offender owns or operates.
- Authorizes the Florida Department of Law Enforcement to assume the responsibilities relating to registering sexual offenders under the jurisdiction of any Indian tribe in the state if the tribe elects to turn these responsibilities over to the state.
- Requires the registration of offenders released from any sanction for a felony offense after July 1, 2008 who have previously been convicted of a sex offense.

On March 14, 2008, the Criminal Justice Impact Conference decided that this bill would have an indeterminate but potentially moderate prison bed impact. The bill will also have a fiscal impact on FDLE and the Department of Corrections – see fiscal section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires additional offenders to register as a sexual predator or sexual offender. The bill requires sexual predators and sexual offenders to provide additional information as part of the registry process.

B. EFFECT OF PROPOSED CHANGES:

In July 2006, the federal Adam Walsh Child Protection and Safety Act of 2006 became law and imposed certain requirements on state sexual offender registries. During the 2007 session, the legislature passed and the Governor signed SB 1604 which significantly changed Florida's sexual predator and sexual offender laws in order to comply with the federal requirements.

In May 2007, the United States Department of Justice published proposed guidelines for the states.¹ Comments were submitted by the states regarding the proposed guidelines. Final guidelines have not been released. This bill makes further changes to the sexual predator and sexual offender laws in order to further compliance with the federal law and the corresponding proposed guidelines.

Qualifying offenses: 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.²

The bill adds the offense of felony video voyeurism³ where the victim is a minor to the list of enumerated offenses under the sexual predator and sexual offender statutes. A person who commits the offense of video voyeurism who has not previously been convicted of an enumerated offense will be considered a sexual offender. A person who commits the offense of video voyeurism who has previously been convicted of video voyeurism or any other enumerated offense will be a sexual predator.

Under the bill, any attempt, solicitation or conspiracy to commit any enumerated offense will be treated in the same manner as the enumerated offense for the purposes of qualifying the person for sexual offender or sexual predator status. The bill also amends the sexual predator and sexual offender statutes to include any conviction for a similar offense committed in the state which has been

¹ <http://www.ojp.usdoj.gov/smart/guidelines.htm>

² See ss. 775.21, 943.0435 and 944.607, F.S.

³ Currently, s. 810.145, F.S. provides that a person commits video voyeurism by:

- Intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy, for the offender's own amusement, entertainment, sexual arousal, gratification, or profit or for the purpose of degrading or abusing another person.
- Intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person as stated above, but for the amusement entertainment, sexual arousal, gratification, or profit of another person.
- Intentionally using an imaging device to secretly view, broadcast, or record under or through another person's clothing in order to view that person's body or undergarments, for the amusement, entertainment, sexual arousal, gratification, or profit or for the purpose of degrading or abusing another person.

A first violation of this section is a first degree misdemeanor; a second or subsequent violation is a third degree felony. Section 810.145, F.S., also includes the offenses of video voyeurism dissemination and commercial video voyeurism dissemination for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.

redesignated from a former statute number to one of the statute numbers listed as an enumerated offense.

Driver's licenses and identification cards: During the 2007 session, s. 322.141, F.S., was created which required that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders have the following markings on the front of the card:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S. or s. 944.607, F.S., the marking "943.0435, F.S."

The bill amends this section to provide that the driver's license or identification card of a juvenile that is required to register pursuant to s. 985.4815, F.S. must have the marking "s. 943.0435, F.S."

Information which must be provided by sexual predator/sexual offender: The Adam Walsh Act requires that sexual offenders provide specified information for inclusion in the sex offender registry. In addition to the information listed in the Adam Walsh Act, the legislation also requires that any other information required by the U.S. Attorney General be provided.

Currently, under Florida law, a sexual predator is required to provide the following information to the sheriff's office:

- 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;
- any electronic mail address and any instant message name;
- date and place of any employment;
- date and place of each conviction;
- fingerprints;
- brief description of the crime or crimes committed by the offender
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The bill requires that the following additional information be provided as required either by the specific language of the Adam Walsh Act or by the proposed guidelines of the Department of Justice:

- Nicknames and pseudonyms;
- Any alias or false social security numbers ever used;
- Any alias or false date of birth ever used;
- Physical description, including scars, marks and tattoos;
- If no permanent or temporary address, any transient residence within the state;
- Address, location or description and dates of any current or known future temporary residence within the state or out of state;
- All phone numbers, including fixed location and cellular phone numbers and any other designations used for purposes of routing or self-identification in telephonic communications;
- Date and place of any current or known future employment, volunteer work, trade or business, including employer address or location if no specific address is available;
- All professional licenses that authorize him or her to engage in an occupation or carry out a trade or business

- All driver's license and identification card numbers and identifiers;
- All travel and immigration documents, including passport and visa, and identifying information from such documents, including, but not limited to, unique identifiers and pertinent issuance and expiration dates, location of issuance, destinations, and immigration status;
- Biometric identification information, including fingerprints and palm prints.

The bill provides that a person designated as a sexual predator on or after December 31, 2008, must submit a set of palm prints during registration. The sheriff will be required to provide FDLE with the palm prints in an electronic format. FDLE will be authorized to provide the palm prints to the Federal Bureau of Investigation and to other criminal justice agencies.

Sexual predators must re-register every six months and update any information required to be provided. The bill amends s. 775.21(8)(a)1, F.S., F.S. to provide that the identification information required above must be updated as part of the re-registration process.

The bill makes corresponding changes to the sexual offender laws – s.943.0435(2)(b) and (14)(c); 944.607(4)(a) and (13)(c); 985.481(3)(a)1; 985.4815(4)(a) and (13)(b)1.

Temporary and transient residences: Currently, a sexual predator or sexual offender is required to report his or her permanent or temporary residence to the sheriff's office. Currently, the term temporary residence is defined as follows:

a place where the person abides, lodges, or resides for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

The bill alters this to provide that the definition to specify that it includes vacation, business or personal travel destinations.

The bill defines the term "transient residence" to mean "a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address, and the term includes, but is not limited to, any place where the person sleeps or seeks shelter, including a location that has no specific street address." A sexual predator or sexual offender will be required to provide and update this information.

Employment address information: The bill amends s. 775.21(6)(a)1.d., F.S. to provide that if the sexual predator is employed, volunteers, or carries out any trade or business, the sexual predator must register the employment address or location for that activity if no specific address is available. If the sexual predator's employment lacks a fixed employment address or location, the sexual predator must register information regarding his or her probable locations during the course of the employment, including normal routes or general areas, with whatever definiteness is possible. Each change in this information must be reported in person at the sheriff's office or the Department of Corrections if the sexual predator is under the supervision of DOC within 48 hours after any change in status. The sheriff or DOC will be required to provide this information to FDLE.

The bill requires that any changes to this information be provided during re-registration.

The bill makes identical changes to the sexual offender statutes, s. 943.0435(2)(b)3., s. 944.607(4)(c) and 985.4815(4)(c)

Vehicle/vessel information: The bill provides that if a sexual predator *owns or operates* any vehicle, vessel, aircraft or other land vehicle for personal use or in the course of any employment, the sexual

predator must register the following information regarding the vehicle, vessel, aircraft, or other land vehicle:⁴

- license tag number and information,
- description, including trade or business names or information thereon,
- registration and other identifiers,
- information regarding the place or places where such vehicle, vessel, aircraft, or other land vehicle is habitually parked, docked, or otherwise kept if the information is different than the registrant's address

Each change in this information must be reported in person at the sheriff's office or the Department of Corrections if the sexual predator is under the supervision of DOC within 48 hours after any change in status. The sheriff or DOC will be required to provide this information to FDLE.

The bill makes identical changes to the sexual offender statutes, s. 943.0435(2)(b)4., s. 944.607(4)(d) and 985.4815(4)(d).

Educational institution: Currently, a sexual predator or sexual offender who is enrolled, employed or carrying on a vacation at an institution of higher education must provide this information as part of the registration process and must update it within 48 hours after any change in status. The bill requires that this information be provided by a sexual predator or sexual offender who is enrolled, employed or carrying on a vocation *or will be* enrolled, employed or carrying on a vocation at a secondary educational institutional as well as an institution of higher learning.⁵ The bill defines the term "secondary educational institution" as "any trade, professional, or secondary school, whether public, private, religious, denominational, parochial, or nonparochial, attended for any purpose, including, but not limited to, secular, religious or cultural studies."

Community notification: Currently, the sheriff or chief of police must notify each licensed day care center, elementary school, middle school, and high school within a 1 mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator.⁶ The following information must be provided:

1. The name of the sexual predator;
2. A description of the sexual predator, including a photograph;
3. The sexual predator's current address, including the name of the county or municipality if known;
4. The circumstances of the sexual predator's offense or offenses; and
5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

The bill provides that the following additional information must be provided by the sheriff or police chief as described above:

1. Nicknames, aliases and pseudonyms of the sexual predator;
2. The sexual predator's current permanent, temporary and transient addresses and descriptions of registered locations that have no specific street address
3. The sexual predator's employment address or, if the sexual predator has no fixed employment address, information regarding his or her probable location during the course of employment, including normal routes or general areas, with whatever definiteness is possible, and, if applicable, information regarding places where the sexual predator volunteers or carries out a trade or business.

⁴ Public law 109-248, sec. 114(a)(6) requires that the license plate and a description of any vehicle owned or operated by the sex offender must be reported.

⁵ Public law 109-248, sec. 111(11) . These changes are made in: 775.21(6)(a)1.b. and (8)(a)2; 943.0435(2)(b)2 and (14)(c)2; 944.607(4)(b) and (13)(c)2; 985.4815(4)(b) and (13)(b)1. and 2.

⁶ The sheriff or police chief is authorized to provide such information regarding a sexual offender but is not required to do so.

4. The sexual predator's institution of higher education or secondary educational institution address.
5. The license tag number and description of each vehicle owned or operated by the sexual predator.
- 6.

Retroactive application: The bill expands the definition of a sexual offender to include people who have been convicted of certain sexual offenses in the past and are released from a sanction as a result of a different felony. [The most recent felony does not have to be a sexual offense.] Specifically, the bill provides that a person who is released on or after July 1, 2008 from any sanction as a result of a conviction for any felony offense in this state and who has previously been convicted in any state of any offense listed in the sexual offender statute, will be required to register as a sexual offender.

This will not apply to people who have been released from sanctions for the previous sexual offense for 25 or more years provided that there is no more than one prior sexual offense and provided that the sexual offense was not a violation of:

1. kidnapping or false imprisonment;⁷
2. sexual battery;⁸
3. lewd or lascivious battery where the court finds the offense involved a victim under 12 or sexual activity by force or coercion;⁹
4. lewd or lascivious molestation where the offender was over 18 and the victim was less than 12;¹⁰
5. lewd or lascivious molestation where the offender was less than 18 and the victim was less than 12 years of age involving unclothed genitals or genital area;¹¹
6. lewd or lascivious molestation where offender was 18 or older and the victim was 12 or older but less than 16 where a court finds the offense involved unclothed genitals or genital area;¹²
7. lewd or lascivious molestation where offender is less than 18 and the victim was 12 or older but less than 16 and the court finds use of force or coercion and unclothed genitals or genital area;¹³
8. any attempt or conspiracy to commit such offense or a violation of a similar law of another jurisdiction

Tribal lands: The Adam Walsh Act provided that a federally recognized Indian tribe may elect to carry out the provisions of the act or elect to delegate its functions to another jurisdiction within which the territory of the tribe is located. In certain circumstances, if the tribe does not act, it will be treated as if it has elected to have another jurisdiction carry out the provisions of the Adam Walsh Act.¹⁴

The bill creates s. 943.04355, F.S. which provides that in conformity with the federal law, described above, FDLE, in conjunction with local law enforcement, is authorized to assume sexual offender registration and community notification duties and functions as they relate to registrants under the jurisdiction of any Indian tribe that maintains a reservation or tribal property sited in the state. According to FDLE, at the present time, all tribes in Florida have elected to operate their own sex offender registry. This language would give FDLE the authority to assume those duties if a tribe were to relinquish their registry.

Duty to uphold: Section 943.0436, F.S. currently provides that a court may not enter an order exempting a person who meets the criteria from the requirements to register as a sexual predator or

⁷ s. 787.01 or s. 787.02, F.S.

⁸ s. 794.011, F.S. excluding s. 794.011(10).

⁹ s. 800.04(4)(b), F.S.

¹⁰ s. 800.05(b), F.S.

¹¹ s. 800.04(5)(c)1, F.S.

¹² s. 800.04(5)(c)2, F.S.

¹³ s. 800.04(5)(d), F.S.

¹⁴ See Public Law 1090248, Sec. 127; 42 U.S.C. 16937.

sexual offender. The bill amends this statute to include references to juveniles who are required to register as a sexual offender.

Jurisdiction for prosecutions: Currently s. 775.25, F.S. establishes where a sexual predator or sexual offender who commits any act or omission in violation of the sexual predator or sexual offender laws may be prosecuted. The bill amends this statute to include references to sections of statute relating to juveniles who are required to register as a sexual offender.

Criminal penalties: Currently, s. 775.21(10), F.S. provides criminal penalties for a sexual predator who fails to register, who fails to re-register or who otherwise fails to comply with the requirements of the section. The bill makes it a third degree felony for a sexual predator or sexual offender to provide false information.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S., relating to color or markings of certain licenses or identification cards.

Section 2. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 3. Amends s. 775.25, F.S., relating to prosecutions for acts or omissions.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department.

Section 5. Creates s. 943.04355, F.S., relating to sexual offender registration and community notification; tribal jurisdictions.

Section 6. Amends s. 943.0436, F.S., relating to duty of the court to uphold laws governing sexual predators and sexual offenders.

Section 7. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 8. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 9. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 10. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 11. Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to FDLE, the provisions of the bill will require 2 Government Analyst I positions. First year costs will be \$117,788 with recurring costs of \$109,012.

According to DOC, the bill which requires additional registry information to be collected "justifies an additional 15 Correctional Probation Specialist positions to complete this work as required." The department also requests a Correctional Services Consultant position. The department indicates that the bill will have a fiscal impact of \$1,288,826 for 2008-09; \$1,151,669 for 2009-10 and \$1,174,423 for 2010-11.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will require sheriffs to collect additional information from registered sexual predators and sexual offenders.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 14, 2008, the Criminal Justice Impact Conference decided that this bill would have an indeterminate but potentially moderate prison bed impact.

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:

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES