

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1277 Sexual Offenders and Predators

**SPONSOR(S):** Appropriations Committee, Criminal Justice Subcommittee; Glorioso

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1890

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Cunningham	Cunningham
2) Appropriations Committee	21 Y, 0 N, As CS	McAuliffe	Leznoff
3) Judiciary Committee			

### SUMMARY ANALYSIS

CS/HB 1277 amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the offense of incest, where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender. This will have the effect of expanding the number of persons who qualify as sexual offenders. Such persons will immediately be subject to the sexual offender registration requirements contained in ss. 943.0435, 944.606, and 944.607, F.S.

The bill also:

- Requires sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before the offender's planned departure if the intended residence of seven days or more is outside the United States.
- Creates s. 847.0141, F.S., which makes it unlawful for a minor to: 1) Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors; 2) Intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.
- Requires sexual predators and offenders to provide the sheriff and FDLE any Internet identifier the offender uses. The bill defines "Internet identifier" as "any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or PIN number."
- Requires sexual offenders and predators to provide passport information, immigration document information, and other specified information to the sheriff as part of the registration process.
- Requires state agencies and governmental subdivisions to search the name of people hired to work in specified locations through the Dru Sjodin National Sex Offender Public Website.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry. Allows persons convicted of certain offenses before July 1, 2007, to be considered for removal of their sexual offender registration requirements. These will have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed.
- Specifies that s. 948.31, F.S., which mandates that the court require sex offender treatment as a term or condition of supervision in certain instances for any person who is required to register as a sexual predator or sexual offender, is a standard condition of supervision and does not require oral pronouncement at the time of sentencing.

The Criminal Justice Impact Conference met on April 4, 2011 and determined the bill will have an insignificant impact on state prison beds. FDLE reports that the bill will require them to spend \$50,450 in nonrecurring funds to hire contract programming staff. According to the department, they can absorb the cost with existing resources.

The bill is effective April 20, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1277c.APC

DATE: 4/18/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Qualifying Offenses (Sections 3, 7 and 8)**

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term “sexual offender,” in part, as a person who:

Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:

- Section 787.01, F.S. (kidnapping)
- Section 787.02, F.S. (false imprisonment)
- Section 787.025(2)(c), F.S. (luring or enticing a child) where the victim is a minor and the defendant is not the victim’s parent or guardian)
- Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.<sup>1</sup>
- Section 794.05, F.S. (unlawful activity with certain minors)
- Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
- Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
- Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.)
- Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.)
- Section 827.071, F.S. (sexual performance by a child)
- Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
- Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.<sup>2</sup>
- Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
- Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
- Section 847.0145, F.S. (selling or buying of minors)
- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender)

And has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described above. A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term “sexual offender” that include the list of offenses enumerated above.

#### *Effect of the Bill*

CS/HB 1277 amends the definition of the term “sexual offender” in ss. 943.0435, 944.606, and 944.607, F.S., to add the offense of incest,<sup>3</sup> where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender.

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<sup>1</sup> Section 794.011(1), F.S., relates to falsely accusing specified persons of sexual battery.

<sup>2</sup> Section 947.0135(6), F.S., provides that it is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of s. 947.0135, F.S.

<sup>3</sup> Currently, s. 826.04, F.S., provides that whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest. Incest is punishable as a 3<sup>rd</sup> degree felony.

## **Sexual Predator and Sexual Offender Registration (Sections 1, 3, 7, 8, 11, and 12)**

In very general terms, the distinction between a sexual predator and a sexual offender depends 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. A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>4</sup> Failure to comply with these requirements is generally a third degree felony.

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>5</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department.<sup>6</sup> The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.

A sexual predator or sexual offender is also required to report any changes to his or her registration information. For example, a sexual predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.<sup>7</sup> In addition, sexual predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.

### *Effect of the Bill*

CS/HB 1277 amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders, during initial registration, to provide to the sheriff's office:

- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Permit sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of seven days or more is outside of the United States.
- Require sexual predators and offender who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.
- Require the sheriff to notify the applicable law enforcement agency in the country where the offender intends to reside.

## **Sexting (Section 2)**

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as sexting. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20% of teens (ages 13-19) and 33% of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves

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<sup>4</sup> See generally, ss. 775.21, 943.0435 and 944.607, F.S.

<sup>5</sup> Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively. Sections 775.21 and 944.607, F.S.

<sup>6</sup> See generally, ss. 775.21, 943.0435 and 944.607, F.S.

<sup>7</sup> *Id.*

electronically.<sup>8</sup> Additionally, 39% of teens and 59% of young adults had sent sexually explicit text messages.<sup>9</sup>

There are no statutes that specifically address sexting. Under current law, a person who “sexts” another could be charged with a variety of offenses, such as transmission of pornography<sup>10</sup> or computer pornography,<sup>11</sup> depending on the nature of the image sexted and the age of the person to whom the image was sent. Additionally, a person who receives and possesses an image that is the result of sexting could be charged with a criminal offense, depending on the nature of the image sexted. For example, in 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriend’s friends and family after an argument. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

Similarly, in other jurisdictions, law enforcement officers and district attorneys have begun prosecuting teens who sext under laws generally reserved for those who produce, distribute, or possess child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with “provocative” images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a 5-week after school program and probation.<sup>12</sup> Similar incidents have occurred in Massachusetts, Ohio, and Iowa.<sup>13</sup> As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors.

#### *Effect of the Bill*

The bill creates s. 847.0141, F.S., entitled “Unlawful electronic communication between minors; possession of visual depiction of another minor.” The bill makes it unlawful for a minor to:

- Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors.
- Intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.

The above-described acts are not unlawful if all of the following apply:

- The minor did not solicit the visual depiction.
- The minor took reasonable steps to report the visual depiction to the minor's parent or guardian or to a school or law enforcement official.
- The minor did not transmit or distribute the visual depiction to a third party.

Violations of the above-described prohibited acts are punishable as:

- A noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The bill authorizes the court to

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<sup>8</sup> “Sex and Tech: Results from a survey of teens and young adults.” The National Campaign to Prevent Teen and Unplanned Pregnancy. December 10, 2008.

<sup>9</sup> *Id.*

<sup>10</sup> Section 847.0137(2), F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person commits a 3<sup>rd</sup> degree felony.

<sup>11</sup> Section 847.0135, F.S., makes it a 3<sup>rd</sup> degree felony for a person to knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer; make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor; knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

<sup>12</sup> Amanda Lenhart, *Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging*, Pew Research Ctr., 3 (Dec. 15, 2009), available at [http://www.pewinternet.org/~media/Files/Reports/2009/PIP\\_Teens\\_and\\_Sexting.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Teens_and_Sexting.pdf) (last visited Jan. 24, 2011).

<sup>13</sup> *Id.* See also, Vicki Mabrey and David Perozzi, ‘Sexting’: Should Child Pornography Laws Apply?, ABC NEWS (Apr. 1, 2010), available at <http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790> (last visited Jan. 24, 2011)

also order suitable training concerning such offenses and to prohibit the use or possession of electronic devices.<sup>14</sup>

- A 2<sup>nd</sup> degree misdemeanor<sup>15</sup> for a violation that occurs after being found to have committed a noncriminal sexting offense. The bill requires the court to order suitable training concerning such offenses and to prohibit the use or possession of electronic communication devices.
- A 1<sup>st</sup> degree misdemeanor<sup>16</sup> for a violation that occurs after being found to have committed a 2<sup>nd</sup> degree misdemeanor sexting offense. The court must order suitable training concerning such offenses or, if ordered by the court in lieu of training, counseling. The court must also prohibit the use or possession of electronic devices.
- A 3<sup>rd</sup> degree felony<sup>17</sup> for a violation that occurs after being found to have committed a 1<sup>st</sup> degree misdemeanor sexting offense. The court must order a mental health evaluation by a qualified practitioner, as defined in s. 948.001, F.S., and treatment, if recommended by the practitioner.

The bill requires a law enforcement officer who arrests any person charged with any offense described above to seize the prohibited material and take the material into his or her custody to await the sentence of the court. The bill requires the court to order the confiscation of the unlawful material and authorizes the law enforcement agency in which the material is held to destroy the unlawful material.

The bill specifies that the above provisions do not prohibit the prosecution of a minor for a violation of any law of this state if the electronic communication includes the depiction of sexual conduct or sexual excitement and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

### **Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 3, 6, 7, and 8)**

In addition to providing the above-described information during initial registration, a sexual predator or sexual offender is required to provide the sheriff any instant message name the offender wants to use.<sup>18</sup> Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.<sup>19</sup>

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term “instant message name” as “an identifier that allows a person to communicate in real time with another person using the Internet.”

#### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term “instant message name” with “Internet identifier.” The bill defines the term “Internet identifier” as “any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or PIN number.” The bill specifies that an offender’s voluntary disclosure of his or her date of birth, social security number, or PIN number as an Internet identifier waives the disclosure exemption for such personal information. Sexual predators and offenders will now be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term “instant message name” with the term “Internet identifier” in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.<sup>20</sup>

### **Search of Registration Information (Section 4)**

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<sup>14</sup> Electronic devices include but are not limited to cellular telephones, cameras, computers, or other electronic media devices.

<sup>15</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>18</sup> See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

<sup>19</sup> FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

<sup>20</sup> Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>21</sup> to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

#### *Effect of the Bill*

The bill amends s. 943.04351, F.S., to require states agencies and governmental subdivisions to also search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

#### **Removal of the Requirement to Register as a Sexual Offender (Section 5)**

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender's 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 met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>22</sup> However, there are ways in which the registration requirement can be removed.

#### Section 943.0435(11), F.S.

Sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.<sup>23</sup>

Sexual offenders defined in 943.0435(1)(a)1.b., F.S., can have the registration requirement removed if he or she provides FDLE with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued that states that such designation has been removed or demonstrates to FDLE that such 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 such person no longer meets the criteria for registration as a sexual offender under the laws of Florida.<sup>24</sup>

#### Section 943.04354, F.S.

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<sup>21</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

<sup>22</sup> Sections 775.21(6) and 943.0435(11), F.S.

<sup>23</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

<sup>24</sup> Section 943.0435(11)(b), F.S.

A person can be considered for removal of the requirement to register as a sexual offender or sexual predator if the person:

- Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt 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 ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- 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 a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), 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 requirement that the person register as a sexual offender or sexual predator.<sup>25</sup> At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above 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.<sup>26</sup>

A person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or sexual predator.<sup>27</sup> The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.<sup>28</sup>

#### *Effect of the Bill*

The bill amends s. 943.04354, F.S., to change the victim age criteria that must be met before a person can be removed from the registry. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or sexual predator if the person:

- Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt 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 ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- Is not more than 4 years older than the victim of this violation who was 13 years of age or older but not more than 18 years of age at the time the person committed this violation.

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<sup>25</sup> The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

<sup>26</sup> If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

<sup>27</sup> The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

<sup>28</sup> If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

The bill also removes the requirement that only those persons that have been convicted of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., on or after July 1, 2007, are eligible to be considered for removal of the requirement to register as a sexual offender or sexual predator. This would allow all persons convicted of those offenses, and that also comply with the above requirements, to be considered for removal of their sexual offender registration requirements.

This will have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed.

### **Definition of Risk Assessment (Section 9)**

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

Section 947.005, F.S., currently defines the term “risk assessment” as “an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.”

#### *Effect of the Bill*

The bill amends the definition of the term “risk assessment” to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

### **Conditions of Supervision – Sex Offender Treatment (section 10)**

Section 948.03, F.S., sets forth the standard conditions of probation that offenders must comply with. Standard conditions of probation do not require oral pronouncement at sentencing.<sup>29</sup> In contrast, special conditions of probation, those conditions that are not specifically authorized by statute, must be imposed by oral pronouncement at sentencing and be included in the written sentencing order.<sup>30</sup>

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.<sup>31</sup>

#### *Effect of the Bill*

The bill specifies that conditions imposed pursuant to s. 948.31, F.S., are standard conditions of supervision and do not require oral pronouncement at the time of sentencing.

The bill also removes the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended.

### **Severability Clause (Section 13)**

The bill provides the following severability clause:

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<sup>29</sup> Section 948.03(1), F.S.

<sup>30</sup> Section 948.039, F.S.

<sup>31</sup> Section 948.30, F.S., currently contains standard conditions of probation that require sex offender treatment for certain offenders and that prohibit certain sex offenders from having contact with minors if the victim of the offender’s offense was under 18. The bill requires courts to impose a restriction against contact with minors regardless of whether the offender’s victim was a minor.



If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2. Creates s. 847.0141, F.S., relating to unlawful electronic communication between minors; possession of visual depiction of another minor.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 5. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 6. Amends s. 943.0437, F.S., relating to commercial social networking websites.

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 the Department of Law Enforcement of information on sexual offenders.

Section 9. Amends s. 947.005, F.S., relating to definitions.

Section 10. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 11. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 12. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 13. Provides for severability.

Section 14. This bill takes effect April 20, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on April 4, 2011 and determined the bill will have an insignificant impact on state prison beds. The bill may have a prison bed impact on the Department of Corrections in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide

when registering. However, failure to register is generally punishable as an unranked 3<sup>rd</sup> degree felony, so the impact to state prison beds will likely be insignificant.

FDLE reports that the bill will require them to spend \$50,450 in nonrecurring funds to hire contract programming staff. In their analysis of CS/HB 1277, FDLE stated:

This funding is necessary to hire contract programming staff to complete the 646 hours of programming and testing necessary to implement the requirements of this bill. FDLE recommends the effective date of this bill be moved to April 30, 2012 to allow time to complete previous legislatively mandated enhancements, to advertise, interview, hire and background the new programmer to perform the work, test and implement the system, and conduct a knowledge transfer.

Total Costs: \$48,450 (programming costs) + \$2,000 (equipment) = Total Estimate \$50,450

The revised programming accounts for expanded capture of Internet Identifiers, collection of passport and immigration docs and the addition of "Incest" as a qualifying offense.

According to FDLE, they will be able to absorb these costs with existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take 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:**

In their analysis of CS/HB 1277, FDLE recommended:

- Replacing the language on Lines 520-521, “sexual offender’s permanent, temporary, or transient residence” to now read, “sexual offender’s residence.”

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2011, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The first amendment:

- Deleted language that expanded the definition of “sexual offender” in ss. 943.0435, F.S., to include persons released on or after October 1, 2011, from any sanction imposed for any felony conviction who has a prior qualifying conviction.
- Required sexual predators and offenders to provide passport information, immigration document information, and other specified information to the sheriffs as part of the registration process.
- Deleted the provision relating to the offense of “sexting.”
- Deleted the provision that created a new section of statute that provided an additional way in which sexual offenders could be removed from the registry.

The second amendment removed a duplicative requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended.

This analysis is drafted to the Committee Substitute.

On April 15, 2011, the Appropriations Committee adopted a strike everything amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Removes the requirement that only those persons that have been convicted of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., on or after July 1, 2007, are eligible to be considered for removal of the requirement to register as a sexual offender or sexual predator.
- Creates s. 847.0141, F.S., which makes it unlawful for a minor to: Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors, and; Intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors.
- Clarifies when a sexual offender must produce a passport or provide documents establishing immigration status.
- Changes the effective date to April 20, 2012.