

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1200

INTRODUCER: Senator Bogdanoff

SUBJECT: Sexual Offenders and Sexual Predators

DATE: January 26, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends various statutes relating to sexual predator and sexual offender registration and notification requirements. It bases some requirements on homelessness, rather than transient status, and requires sexual predators and sexual offenders who are homeless to update the location where they sleep or seek shelter monthly at the sheriff’s office. Currently, sexual predators and sexual offenders are required to update their information every quarter.

The bill also changes an element of the enhanced crime of loitering or prowling to apply when a sexual offender or sexual predator commits the offense within 300 feet of a place where children congregate. Currently, the statute applies only when the offense was committed within 300 feet of a place where children were congregating at the time of the offense.

This bill substantially amends sections 775.21, 856.022, 943.0435, 944.606, 944.607, 985.481, and 985.4815 of the Florida Statutes.

II. Present Situation:

Sexual Predator and Sexual Offender Reporting Requirements

The distinction between a sexual predator and a sexual offender is based on the offense, the date the offense occurred or when sanctions were completed, and whether the person was previously convicted of a sexual offense. Conviction of committing or attempting to commit any of the following offenses would require registration as either a sexual offender or a sexual predator¹:

¹ The criteria for designation as a sexual predator is found in s. 775.21, F.S. The criteria for registration as a sexual offender is found in s. 943.0435, F.S.

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery (s. 794.011, F.S., except false accusation of another under subsection (10)).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S., except owners or operators of computer services liable under subsection (6)).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

Designation as a sexual predator requires either: (1) conviction of one of the enumerated offenses after having previously been convicted of one of the offenses, or (2) conviction of a capital, life, or first-degree felony violation of s. 787.01, F.S., or s. 787.02, F.S.; where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S.; s. 800.04, F.S.; s. 847.0145, F.S.; or conviction for violating a similar law of another jurisdiction. Sexual predator status can only be conferred as the result of offenses committed on or after October 1, 1993.

The requirement to register as a sexual offender is triggered by conviction of committing or attempting, soliciting, or conspiring to commit one of the offenses, transmission of child pornography by electronic device (s. 847.0137, F.S.), or transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.). It applies only when the offender was released from the sanction for the offense on or after October 1, 1997.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.² Those in custody will be registered by the agency by which they are held. Persons under the supervision of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ) must register with the respective department. All others must register at the county sheriff's office within 48 hours of either: (1) being designated as a sexual predator; (2) convicted of an offense that requires registration as a sexual offender; or (3) establishing a residence in the county.

² The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

A variety of personal identifying information must be provided to the sheriff's office as part of the registration process. This information includes the address of a legal residence or temporary residence or the address, location or description of a transient residence, any electronic mail address, and any instant message name.

The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

After the initial registration, both sexual predators and sexual offenders must report to the sheriff's office during their birth month to update the information. Sexual predators are required to report every quarter thereafter, while sexual offenders are required to report every six months.

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established. Transient residence is defined as:

... 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. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.³

The predator or offender must also report his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. However, this notice must be given in person to the county sheriff, not to the driver's license office.

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent, temporary, or transient residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent, temporary, or transient address, if known during the time of incarceration or residential commitment.

Loitering and Prowling

"Loitering and prowling" is a second degree misdemeanor prohibited by s. 856.021, F.S. The elements required to be proven for conviction are that the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that

³ Section 775.21(2)(m), F.S.

warranted justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among circumstances that may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify him or herself, or manifestly endeavors to conceal him or herself or any object. Because it is a misdemeanor, all elements of the offense must be committed in the officer's presence prior to arrest. An unusual requirement of the statute is that the law enforcement officer must give the suspect an opportunity to dispel any alarm or immediate concern by requesting the suspect to identify him or herself and to explain his or her presence or conduct.

Section 856.022, F.S., increases the penalty for loitering and prowling to a first degree misdemeanor if it is proven that:

- (1) The offender committed loitering or prowling;
- (2) At the time, the offender was within 300 feet of a place where children were congregating;
- (3) The offender was previously convicted of a crime that is a qualifying offense for designation as either a sexual offender or a sexual predator, and the victim was under 18 years of age at the time. This includes offenders who are designated as a sexual offender or a sexual predator as well as those who are not so designated for some reason. However, it does not include offenders who have been removed from the registration requirements pursuant to s. 943.04354, F.S., who have been pardoned, or whose conviction was set aside in a post-conviction proceeding.

III. Effect of Proposed Changes:

Provisions Relating to Registration and Notification Requirements

Sections 1 and 3-7 of the bill amend statutes relating to registration and notification requirements for sexual predators and sexual offenders.

Section 1 of the bill amends s. 775.21, F.S., the Florida Sexual Predators Act, to remove the definition of "transient residence" and add a definition of "homelessness." As defined in the bill, homelessness means "... a temporary condition and social category of people without a dwelling who are unable to maintain adequate housing" and the term dwelling "includes, but is not limited to, a place where a person sleeps or seeks shelter." The bill's definition of homelessness is more inclusive than the current statute's definition of transient residence, which applies only to places where the predator stayed for a total of at least 5 days during a calendar year. The broader term "homelessness" would apply to persons who move from place to place even if they are not in one place for more than five days in the year. The department has estimated that approximately 75 homeless sexual predators or sexual offenders are on community supervision statewide.⁴

This section of the bill makes amendments throughout s. 775.21, F.S., to replace references to establishing or maintaining a transient residence with references to establishing or maintaining homeless status. It also changes current references to a sexual predator's transient residence to refer to a place where the predator sleeps or seeks shelter.

⁴ Department of Corrections Analysis of Senate Bill 1178 (2011).

Two new provisions are included in addition to changes related to referring to homelessness rather than transiency:

- Section 775.21(6)(a), F.S., adds a requirement that a homeless predator must go to the sheriff's office in person each month to update the location where he or she sleeps or seeks shelter. The homeless predator would still be subject to the requirement in s. 775.21(8), F.S., to report to the sheriff's office annually during his or her birth month and every third month thereafter to update all registration information. It is presumed that both the monthly report and the quarterly update requirements could be met in the same visit.
- Failure to meet the monthly reporting requirement or falsely claiming to be homeless are made violations of the registration requirement, which is a second degree felony offense.

Section 3 amends s. 944.0435, F.S., which relates to sexual offenders, to be consistent with the amendments s. 775.21, F.S., in section 1 of the bill relating to sexual predators.

Sections 4-8 make consistent amendments to ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., in order to refer to homelessness rather than transiency.

Loitering and Prowling in Close Proximity to Children

Section 2 of the bill amends s. 856.022, F.S., to change an element of the enhanced loitering or prowling statute. Currently, an element of the enhanced offense is that it applies only if the offender was loitering or prowling within 300 feet of a place where children were congregating at the time of the offense. The bill amends the statute to apply to offenses committed within 300 feet of a place where children congregate, without the requirement for children to be congregating at the time of the offense.

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 amendment to the wording of the enhanced loitering or prowling offense in Section 2 of the bill raises due process concerns. Proving a violation of s. 856.022, F.S., currently requires that, in committing loitering or prowling, the offender must have been within 300 feet of a place where children were congregating. The bill's proposed change of the

statutory language from “a place where children were congregating” to “a place where children congregate” elevates concerns that the offender may not reasonably be able to ascertain that he or she is within a prohibited area. It is recommended that consideration be given to requiring that the offender be within 300 feet of a place where children “regularly congregate” or “regularly congregate or were congregating at the time of the offense.”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections has reported that the increase in reporting frequency and the new offense of falsely reporting homelessness by a sexual predator or sexual offender could increase community supervision violations. However, the Criminal Justice Impact Conference has not yet considered the impact of the bill.

FDLE estimates that the provisions of the bill would require 2 additional FTEs and implementation costs for programming and translation. They estimate that this will cost \$152,957 in the first year, with annual recurring costs of \$115,106.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.