

**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 Committee on Criminal Justice

BILL: CS/SB 1114

INTRODUCER: Criminal Justice Committee and Senator Altman

SUBJECT: Sex Offenses

DATE: April 1, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Fav/CS</b>
2.	_____	_____	JU	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 1114, which primarily addresses sexual predator/offender registration, includes the following major features:

- Modifies the child victim out-of-court statement exception to the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).
- Modifies various registration, reregistration, and reporting provisions relevant to sexual predators and sexual offenders to:
  - Add specified sex offenses (e.g., lewd offenses committed upon the elderly or disabled) to criteria or definitions that qualify a person as a sexual predator or sexual offender.
  - Require that Internet identifiers, palm prints, passports, professional license information, immigration status information, volunteer status at a Florida institution of higher education, and other information be provided, produced, or reported, as specified in the bill.
  - Require sexual predators or sexual offenders to register all Internet identifiers with the FDLE prior to use.
  - Require a sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles

- (DHSMV) to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change.
- Require a sexual predator or sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence.
  - Authorize certain sexual offenders to move for removal of the registration requirement after a specified time period and subject to specified criteria being met.
  - Remove a current requirement that the petitioning sexual offender demonstrate to the court that he or she has not been arrested for any crime since release.
  - Modify various penalty provisions to punish a sexual predator or sexual offender who fails to report that he or she remains in Florida after reporting an intent to leave Florida, fails to provide required Internet identifiers prior to use, or knowingly provides false registration information by act or omission.
  - Provides that a third or subsequent violation of s. 800.03, F.S. (vulgar or indecent exposure or exhibition of person's sexual organs and public nakedness in a place not provided or set apart for that purpose), is a third degree felony.
  - Provides that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a traffic misdemeanor offense under ch. 316, F.S., is required to register as a sexual offender or a sexual predator; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
  - Provides that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
  - Modifies the child victim age requirement (from 14 years of age to 13 years of age) and modifies other criteria in s. 943.04354, F.S. (the "Romeo and Juliet" statute). A sexual predator or sexual offender who meet these criteria may move the court, as specified in the bill, to have the registration requirement removed.
  - Authorizes the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

This bill substantially amends the following sections of the Florida Statutes: 90.803; 775.21; 800.03; 903.046; 921.0022; 943.0435; 943.04351; 943.04354; 943.0437; 944.606; 944.607; 947.005; 948.31; 985.481; and 985.4815.

## II. Present Situation:

### Hearsay Exception: Out-of-Court Statement of Child Victim

Chapter 90, F.S., is the Florida Evidence Code (Code). Section 90.802, F.S., of the Code, provides the general rule that hearsay is inadmissible except as provided by statute. Section 90.801(1)(c), F.S., defines “hearsay” as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

Section 90.803(23), F.S., provides an exception to the hearsay rule. Specifically, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
- The child either:
  - Testifies; or
  - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child’s participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.

In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the child’s statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

The court is required to make specific findings of fact, on the record, as to the basis for its ruling under s. 90.803(23), F.S.

### Registration of Sexual Predators and Sexual Offenders: General Information

Florida requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain

information about sexual predators and sexual offenders, span several different chapters and numerous statutes, and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Family Services (DCF).<sup>1</sup>

A person who meets sexual predator qualifying criteria is designated by a court as a sexual predator. A person who meets sexual offender qualifying criteria is classified as a sexual offender (no court designation). Aside from sexual predator qualifying criteria, there are a few other provisions that apply only to sexual predators, such as the prohibition against working or volunteering at places where children regularly congregate.

Requirements for in-person registration and reregistration (discussed below) are similar for sexual predators and sexual offenders but frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, i.e., the sexual predator or sexual offender is in the DOC's control or custody or under its supervision; is in residential commitment under the DJJ or under DJJ's supervision; or is in civil commitment under the DCF as a sexually violent predator. These agencies are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

Certain information on sexual predators and sexual offenders is a public record and there are various provisions authorizing or requiring public or community notification of this information. The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.<sup>2</sup> Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry maintained by the FDLE.

## **SORNA**

The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),<sup>3</sup> attempts to make all states' laws uniform with respect to requirements (or "minimum" standards) that Congress has judged to be necessary to be included in states' laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.<sup>4</sup> While states are free to choose not to substantially implement SORNA, the AWA provides for sanctioning noncomplying states through a partial reduction in Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented<sup>5</sup> SORNA.<sup>6</sup> Florida was the third state to do so.<sup>7</sup>

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<sup>1</sup> The FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration.

<sup>2</sup> "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Z57sCH6qxtkuph8ZJOqpXg> (last visited on March 25, 2013).

<sup>3</sup> P.L. 109-248 (July 27, 2006).

<sup>4</sup> "Dru Sjodin National Sex Offender Public Website," <http://www.nsopw.gov/Core/Portal.aspx> (last visited on March 25, 2013).

<sup>5</sup> This standard is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the DOJ's guidelines on SORNA. It does not mean that the jurisdiction has necessarily followed SORNA or the DOJ's guidelines on SORNA in all respects.

## Registration and Reregistration Requirements

At the FDLE's website,<sup>8</sup> the following information is provided to sexual predators and sexual offenders regarding registration, reregistration, and other requirements:

- A sexual predator or sexual offender must report in person to the local sheriff's office to register his or her temporary, transient, or permanent address and other information specified in statute within 48 hours of establishing or maintaining a residence in Florida; within 48 hours of release from custody and/or supervision of the DOC, DCF, or DJJ; or in the county of conviction (if not under custody and/or supervision), within 48 hours of conviction if not under custody and/or supervision of the DOC.
- At initial registration, a sexual predator or sexual offender must provide the following information to the FDLE: name; date of birth; social security number; race; sex; height; weight; hair and eye color; photograph; home telephone number and any cellular telephone number; any electronic mail address and any instant message name (as required by statute); address of legal residence; address of any current temporary residence, if no permanent or temporary residence; any transient residence within Florida; dates of any current or known future temporary residence within Florida or out of state; occupation and place of employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed.
- Within 48 hours after the initial report required (as previously stated), a sexual predator or sexual offender must report in person to the driver license office of the DHSMV and provide proof of initial registration as a sexual predator or sexual offender to secure or renew a valid Florida driver's license or identification card displaying one of the following designations: "775.21, F.S." or "943.0435, F.S.," unless a driver's license or identification card with such designation was previously secured or updated. A sexual offender must also submit to the taking of a photograph for use by the FDLE in maintaining current records of sexual offenders.
- Each time the driver's license or identification card is subject to renewal, or within 48 hours after any change in permanent, temporary, or transient residence or change in name made by marriage or other legal process, a sexual predator or sexual offender must report in person to a driver's license office to update the driver's license or identification card and ensure that it displays the designations (as previously identified).
- If enrolled, employed, or carrying on a vocation at a Florida institution of higher education, a sexual predator or sexual offender must provide the name, address, and county of each institution, including each campus, enrollment, or employment status, and each change in enrollment or employment status (i.e. commencement or termination) in person at the

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<sup>6</sup> "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, [http://www.ojp.usdoj.gov/smart/newsroom\\_jurisdictions\\_sorna.htm](http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm) (last visited on March 25, 2013).

<sup>7</sup> "Governor Crist Announces Florida's Implementation of the Adam Walsh Act" (May 18, 2010), Florida Department of Law Enforcement, <https://www.fdle.state.fl.us/Content/News/May-2010/Governor-Crist-Announces-Florida%e2%80%99s-Implementation-.aspx> (last visited on March 25, 2013).

<sup>8</sup> "Important Information," Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us/offender/Important.jsp#General> (last visited on March 25, 2013), discussing provisions of ss. 775.21 and 943.0435, F.S.

sheriff's office. If a sexual offender is supervised by the DOC or the DJJ, this information must be reported to the sexual offender's probation office, within 48 hours after any change in status.

- A sexual predator or sexual offender must report any electronic mail address or instant message name, prior to using the address or name, during registration/reregistration or by providing all updates through the online system maintained by the FDLE.
- If a sexual predator or sexual offender vacates a permanent, temporary, or transient residence and does not have another permanent, temporary, or transient residence, he or she must report in person to the sheriff's office in the county where he or she is located within 48 hours. If a sexual predator or sexual offender reports that he or she has vacated a permanent, temporary, or transient residence and then remains at that residence, he or she must report in person to the sheriff's office where he or she reported vacating the residence. Failure to report this information is a second degree felony. The address will be verified by county, state, or local law enforcement agencies.
- If a sexual predator or sexual offender intends on establishing a permanent, temporary, or transient residence in another state or in a jurisdiction other than Florida, he or she must report in person to the sheriff's office of the county of current residence within 48 hours before the date that he or she intends to leave Florida to establish residence in another state or jurisdiction. If the sexual predator or sexual offender reporting this information later decides to remain in Florida, he or she must report in person to the sheriff's office to which he or she reported the intention of leaving Florida within 48 hours after the intended departure date. Failure to report this information is a second degree felony.
- A sexual predator or sexual offender must report in person either twice a year (during the birth month and during the sixth month following the birth month) or four times a year (once during the birth month and every third month thereafter), depending upon his or her offense/designation, to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. All sexual predators and sexual offenders convicted for offenses specified in s. 943.0435(14), F.S., and juvenile sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S., are required to reregister four times a year. All other sexual offenders are required to reregister twice a year.
- If a sexual predator or sexual offender lives in another state but works or attends school in Florida, he or she must register the work or school address as a temporary address within 48 hours by reporting in person to the local sheriff's office.
- A sexual predator or sexual offender must respond to any address verification correspondence from the FDLE within three weeks of the date of the correspondence.
- If employed, carrying on a vocation, a student, or becoming a resident of another state, a sexual predator or sexual offender may have a requirement to register under the laws of that state.
- A sexual predator or sexual offender must maintain registration for the duration of his or her life.<sup>9</sup>

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<sup>9</sup> This is the general rule. Exceptions exist in ss. 775.21, 943.0435, and 943.04354, F.S.

### **Reporting of Information Regarding Sexual Predators and Sexual Offenders**

Section 944.606, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is being released after serving a period of incarceration. Similarly, agency reporting requirements exist in other statutes:

- Section 944.607, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.
- Section 985.481, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender released from residential commitment under the DJJ.
- Section 985.4815, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender under DJJ supervision but who is not committed.

### **Public Registry Searches Prior to Appointment or Employment of Certain Government Employees**

Section 943.04351, F.S., provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S. The agency or governmental subdivision may conduct the search using the Internet site maintained by the FDLE. Section 943.04351, F.S., does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

### **Providing Information to Commercial Social Networking Websites**

Section 943.0437, F.S., provides that the FDLE may provide information relating to electronic mail addresses and instant message names maintained as part of the sexual offender registry to commercial social networking websites<sup>10</sup> or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by the FDLE.

Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action that meets either criterion:

- The action was voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.

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<sup>10</sup> The term "commercial social networking website" is defined in the statute as a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

- The action was taken to restrict access by such registered user to the commercial social networking website.

### **Removal of Registration Requirement**

Section 943.04354, F.S.,<sup>11</sup> provides for the removal of the requirement to register as a sexual predator or sexual offender if a court finds that *all* criteria are met and grants a motion or petition for removal of the registration requirement. A person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

- Was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., or the person committed a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 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 s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S.
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation.
- 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.

A person who meets all of these criteria can move the court for removal of the registration requirement if the qualifying violation was committed on or after July 1, 2007. The motion is made in the court that will sentence or dispose of the qualifying violation. The person must allege in the motion that he or she meets all of the criteria and that removal of the registration requirement will not conflict with federal law.<sup>12</sup> The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of the qualifying violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of the qualifying violation, the court must rule on this motion and, if the court determines the person meets the 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 to petition for removal of the registration requirement.

A person who meets all of the criteria but does not qualify to seek relief by motion can seek relief by petition in the court in which the sentence or disposition for the qualifying violation occurred. All of the previously described requirements for the motion and the disposition of the motion apply to the petition and disposition of petition. If the court denies the petition, the person is not authorized under s. 943.04354, F.S., to file any further petition for removal of the registration requirement.

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<sup>11</sup> This statute is sometimes referred to as the “Romeo and Juliet” statute or law.

<sup>12</sup> Of relevance to s. 943.04354, F.S., SORNA does not require registration “[w]here both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act,” though “jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct.” “SORNA,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, <http://www.ojp.usdoj.gov/smart/sorna.htm#consensualconduct> (last visited on March 25, 2013).



If a person provides to the FDLE a certified copy of the court's order removing the requirement that the person register as a sexual offender or sexual predator, the registration requirement will not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE. However, the removal of this information from the public registry does not mean that the public is denied access to information about the person's criminal history or record that is otherwise available as a public record.

### **Purpose of and Criteria for Bail Determination**

Article I, Section 14, of the Florida Constitution, provides: "Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained."

Section 903.046, F.S., sets forth the purpose of a bail determination. It also provides considerations which the court is required to consider when determining whether to release a defendant on bail or other conditions, and what the bail or those conditions may be. For example, the court must consider the nature and circumstances of the offense charged. The bill includes a new consideration, which bears some similarity to the consideration in s. 903.046(2)(1), F.S.: "The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant."

Whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

### **Evaluation and Treatment of Sexual Predators and Sexual Offenders on Probation or Community Control**

Section 948.31, F.S., provides that the court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need for the treatment is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21, F.S., or sexual offender under s. 943.0435, F.S., s. 944.606, F.S., or s. 944.607, F.S. The treatment must be obtained from a qualified practitioner as defined in s. 948.001, F.S. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I), F.S. The court must impose a restriction against contact with minors if

sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee must be provided to the court for review.

### III. Effect of Proposed Changes:

**Section 1** amends s. 90.803(23), F.S., the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

As amended, the exception provides that, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if the court finds the statement is reliable (in accordance with the hearing requirements in this subsection) and the child either testifies or is unavailable as a witness (as specified in the subsection).

**Section 2** amends s. 775.21, F.S., relating to sexual predator registration, to:

- Add to the list of offenses that, in addition to other criteria, qualify a person for designation as a “sexual predator” the following offenses:
  - Sexual misconduct by an employee of the Department of Children and Family Services (DCF) or other specified person with specified individuals with developmental disabilities. (s. 393.135(2), F.S.)
  - Sexual activity by a DCF employee or other specified person with a patient in the DCF’s custody or residing in a receiving or treatment facility. (s. 394.4593(2), F.S.)
  - Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person. (s. 825.1025, F.S.)<sup>13</sup>
  - Sexual misconduct by a DCF employee or other specified person with a forensic client who resides in a civil or forensic facility. (s. 916.1075(2), F.S.)
- Require a sexual predator to provide or produce at registration and reregistration the following information and changes to that information:
  - Tattoos or other identifying marks.
  - All “Internet identifiers”<sup>14</sup> (current references to instant message name in various registration statutes are removed). A sexual predator is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual predators may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.

<sup>13</sup> Current law just references lewd or lascivious battery upon an elderly person or disabled person.

<sup>14</sup> The bill defines “Internet identifier” as all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). However, voluntary disclosure of date of birth, social security number, or PIN number waives the disclosure exemption.

- Palm prints. The sheriff's office is required to take a sexual predator's palm prints and forward them to the FDLE.
- A passport, if the sexual predator has a passport.
- Information about documents establishing immigration status, if the sexual predator is an alien.
- Information about any professional licenses the sexual predator may have.
- Information that the sexual predator is volunteering at a Florida institution of higher education.<sup>15</sup> The sheriff's office or the DOC, if the sexual predator is in the DOC's custody or control or under its supervision, is required to report to a Florida institution of higher education any change in the sexual predator's status as a volunteer at that institution.
- Require a sexual predator who is unable to secure or update a driver license or identification card with the DHSMV to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county in which the sexual predator resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual predator who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual predator's intended residence.
- Require a sexual predator who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual predator indicated he or she would leave Florida, to the sheriff's office where the sexual predator reported the intended change of residence and report his or her intent to remain in Florida.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual predator who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 775.21, F.S.
  - It is a third degree felony to fail to provide required Internet identifier information and other information prior to their use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

**Section 3** amends s. 800.03, F.S., which prohibits vulgar or indecent exposure or exhibition of a person's sexual organs and public nakedness in a place not provided or set apart for that purpose, to provide that a third or subsequent violation of s. 800.03, F.S., is a third degree felony.

**Section 4** amends s. 903.046, F.S., relating to the purpose of and criteria for bail determination, to provide that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other

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<sup>15</sup> Under current law, a sexual predator must report a change in enrollment or employment status at a Florida institution of higher education within 48 hours after the change, unless the sexual predator is in the DOC's custody or control or under its supervision, in which case the DOC reports the change.

than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S. (state uniform traffic control), is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

**Section 5** amends s. 943.0435, F.S., relating to sexual offender registration, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of “sexual offender” pertinent to s. 943.0435, F.S.
- Provide that a court is not required to make a written finding of the age of the victim at the time of the offense if the offense is a violation of s. 794.011, F.S.
- Require a sexual offender to provide or produce at registration and/or reregistration the following information and changes to that information:
  - All Internet identifiers. A sexual offender is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual offenders may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Fingerprints.
  - Palm prints. The sheriff’s office is required to take a sexual offender’s palm prints and forward them to the FDLE.
  - Photograph.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff’s office within 48 hours after the change. The sheriff is required to report to a Florida institution of higher education any change in the sexual offender’s status as a volunteer at that institution.
  - Any other information determined necessary by the FDLE, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.
- Require a sexual offender who is unable to secure or update a driver license or identification card with the DHSMV to report any change in residence or change in name by reason of marriage or other legal process within 48 hours after the change to the sheriff’s office in the county where the sexual offender resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual offender’s intended residence.

- Require a sexual offender who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual offender indicated he or she would leave Florida, to the sheriff's office where the sexual offender reported the intended change of residence and report his or her intent to remain in Florida.
- Authorize a sexual offender to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for removal of the registration requirement if:
  - Twenty-five years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - The sexual offender's requirement to register was not based upon an adult conviction for a violation of s. 787.01, F.S., s. 794.011, F.S., excluding s. 794.011(10), F.S., 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, s. 800.04(5)(b), F.S., or 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 of these offenses; or for a violation of similar law of another jurisdiction; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender whose requirement to register was based upon an adult conviction for a violation of s. 787.02, F.S., or s. 827.071(5), F.S., for any attempt or conspiracy to commit any of these offenses, or for a violation of similar law of another jurisdiction, to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:
  - Fifteen years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender required to register under s. 943.0435(1)(a)(1)(d), F.S.,<sup>16</sup> to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:

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<sup>16</sup> This sub-subparagraph applies to a person who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the statutes or statutory provisions listed in the sub-subparagraph.

- Twenty-five years have elapsed since the sexual offender's registration period for the most recent adjudication that required the offender to register began;
- The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court; and
- The sexual offender has successfully completed all sanctions imposed for any offense that required the offender to register.
- Remove a current provision that requires the sexual offender to demonstrate to the court considering whether to grant or deny the relief that he or she has not been arrested for any crime since release.
- Require the FDLE to be given notice of the petition for removal of the registration requirement.
- Provide that if the court grants the petition, the court shall instruct the petitioner to provide the FDLE with a certified copy of the order granting relief.
- Provide, for the purpose of sexual offenders who may qualify to petition for removal of the registration requirement, that:
  - The registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon the offender's release from incarceration or commitment for the most recent conviction that required the offender to register.
  - A sexual offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual offender who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 943.0435, F.S.
  - It is a third degree felony to fail to report all required Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

**Section 6** amends s. 943.04351, F.S., regarding required searches of sexual predator and sexual offender registration information, to provide that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a national search through the Dru Sjodin National Sex Offender Public Website maintained by the DOJ.

**Section 7** amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances, to:

- Amend criteria for qualifying for consideration for removal of the registration requirement to remove reference to an incipient conviction ("will be convicted") and modify qualifying convictions or juvenile adjudications to include:
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of a specified Florida offense, or a similar offense in another jurisdiction, and the person does not have

- any other conviction, regardless of adjudication or adjudication of delinquency, for a specified Florida offense or a similar offense in another jurisdiction.
- A conviction, regardless of adjudication, or an adjudication of delinquency of a specified Florida offense, or a similar offense in another jurisdiction, and the person is required to register as a sexual offender or sexual predator solely on the basis of this conviction or adjudication.
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of an offense in another jurisdiction that is similar to a specified Florida offense, and the person with the conviction or adjudication of delinquency no longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction where the similar offense occurred.
- Provide that the victim of the qualifying offense must have been 13 years of age or older but less than 18 years of age at the time the offense was committed.
  - Remove the current requirement that a person's relevant offense must be committed on or after July 1, 2007, to move for removal of the registration requirement.
  - Provide that the motion for removal of the registration requirement is in the criminal court of the circuit in which the offense occurred or the sentencing court or, for persons convicted or adjudicated delinquent of a qualifying offense in another jurisdiction, the criminal court of the circuit in which the person resides.
  - Remove current provisions providing for removal of the registration requirement by petition.<sup>17</sup>
  - Require that a person who was convicted or adjudicated delinquent of an offense in another jurisdiction that is similar to a specified Florida offense must provide the court with written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
  - Provide as another permissible time period for notice of the motion: at least 21 days prior to the hearing on the motion.
  - Require the FDLE to be given notice of the motion for removal of the registration requirement.
  - Authorize the FDLE to present evidence in opposition to the requested relief or otherwise demonstrate why the motion should be denied.
  - Provide as another permissible time period for the court to rule on the motion: at the hearing on the motion.
  - Require the court to instruct the person to provide to the FDLE a certified copy of the order granting relief.
  - Specify that if a person provides to the FDLE a certified copy of the court's order removing the requirement to register as a sexual predator or sexual offender for a violation of a similar offense in another jurisdiction, the registration requirement does not apply to that person and the FDLE shall remove all information about the person from the public registry.

**Section 8** amends s. 943.0437, F.S., relating to commercial social networking websites, to authorize the FDLE to provide information relating to Internet identifiers maintained as part of the sexual offender registry to commercial social networking sites or their designated third parties. A commercial social networking website may use this information for the purpose of

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<sup>17</sup> This petition process is currently available to those who do not qualify under the statute to seek removal by motion but otherwise meet criteria to be considered for removal of the registration requirement.

comparing registered users and screening potential users of the website against the list of Internet identifiers provided by the FDLE. Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an Internet identifier contained in the sexual offender registry.

**Section 9** amends s. 944.606, F.S., relating to notification of release of sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of “sexual offender” pertinent to s. 944.606, F.S.
- Require the DOC to provide to the FDLE the following information about a sexual offender released from imprisonment:
  - Palm prints.
  - All Internet identifiers.
  - Information about any professional licenses the sexual offender may have, if known.
  - Passport information, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.

**Section 10** amends s. 944.607, F.S., relating to notification to the FDLE of information on sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of “sexual offender” pertinent to s. 944.607, F.S.
- Require a sexual offender who is under the supervision of the DOC but is not incarcerated to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Palm prints.
  - All Internet identifiers.
  - All home telephone numbers and cellular telephone numbers.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff’s office within 48 hours after the change. The DOC is required to report to a Florida institution of higher education any change in the sexual offender’s status as a volunteer at that institution.
- Amend penalties to provide that:
  - It is a third degree felony to fail to report all Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.



**Section 11** amends s. 947.005, F.S., the definitions section of ch. 947, F.S., relating to the Parole Commission, to modify the definition of “risk assessment” to mean an assessment completed by a qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child (the current definition indicates the practitioner must be an “*independent* qualified practitioner”).

**Section 12** amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation and community control, to:

- Remove from the statute language that:
  - Requires the court to order an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment.
  - Provides that if the court determines that there is a need for treatment, the court shall require sexual offender treatment as a term of condition of probation or community control for any person required to register as a sexual predator or sexual offender.
  - Requires the court to impose a restriction against contact with minors if sexual offender treatment is recommended.
  - Requires that the evaluation and recommendations for treatment of the probationer or community controllee be provided to the court for review.
- Authorize the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee’s expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

**Section 13** amends s. 985.481, F.S., relating to registration of sexual offenders adjudicated delinquent of certain offenses and DJJ notification of release, to require the DJJ to provide to the FDLE the following information regarding any sexual offender who is being released after serving a period of residential commitment under the DJJ:

- Make, model, color, registration number, and license tag number of all vehicles owned.
- Information about any professional licenses the offender may have, if known.
- Passport information, if the sexual offender has a passport.
- Information about documents establishing immigration status, if the sexual offender is an alien.

**Section 14** amends s. 985.4815, F.S., relating to notification to the FDLE of information on juvenile sex offenders, to:

- Require a sexual offender under the supervision of the DJJ but who is not committed to the DJJ to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.<sup>18</sup>

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<sup>18</sup> The reregistration provision specifies passport information.

- Information about documents establishing immigration status, if the sexual offender is an alien.
- Information about any professional licenses the sexual offender may have.
- Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported to the DJJ within 48 hours after the change. The DJJ must report to the Florida institution of higher education any change in the sexual offender's volunteer status at the institution.
- Amend a penalty provision to provide that it is a third degree felony to knowingly provide false registration information by act or omission.

**Section 15** amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, not substantive changes (grammatical corrections and corrections to descriptive language of some offenses for accuracy).

**Section 16** provides that the act shall take effect October 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the penalty provisions of the original bill will have an insignificant prison bed impact. The committee substitute does not change these penalty provisions.

The estimated fiscal impact of the bill on the FDLE is \$66,425 in non-recurring expenditures. The \$66,425 fiscal impact will be handled within the department's existing

resources.<sup>19</sup> The committee substitute does not change provisions of the original bill impacting the FDLE.

This bill will have no operational or programming impact to the DHSMV since a process is already in place to facilitate the notification process.<sup>20</sup>

The DOC has not provided an analysis. In remarks regarding a similar bill last year (SB 1812), the department remarked that the bill would have required internal programming, form, and procedure revisions, but the fiscal impact for these revisions was not significant.<sup>21</sup>

**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.)

**CS by Criminal Justice on April 1, 2013:**

Modifies the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

- B. **Amendments:**

None.

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

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<sup>19</sup> Analysis of SB 1114, Florida Department of Law Enforcement, dated March 21, 2013 (on file with the Committee on Criminal Justice).

<sup>20</sup> Analysis of SB 1114, Florida Department of Highway Safety and Motor Vehicles, dated March 7, 2013 (on file with the Committee on Criminal Justice).

<sup>21</sup> Analysis of SB 1812, Florida Department of Corrections, dated January 31, 2012 (on file with the Committee on Criminal Justice).