

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: SB 528

INTRODUCER: Senator Evers

SUBJECT: Sex Offenses

DATE: January 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 528 makes numerous changes to Florida laws relevant to registration of sexual predators and sexual offenders (“registrants”). The most important change may be requiring registrants to provide additional personal information, such as information on vehicles a registrant owns and vehicles owned by a person residing with the registrant that may be operated by the registrant.

Specifically, the bill does the following:

- adds specified “sexual misconduct” offenses to criteria or definitions that qualify a person as a sexual predator or sexual offender;
- requires registrants who are unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles to report any change of residence or change of name within 48 hours after the change;
- requires registrants who volunteer at an institution of higher education to report this information;
- requires registrants to report information regarding their intention to establish a residence in another country (or intention to remain in Florida after previously reporting an intention to reside in another country);
- punishes registrants who fail to report Internet identifiers prior to use and registrants who knowingly provide false registration information; and
- modifies provisions relevant to seeking removal of registration requirements to allow for additional sexual offenders to petition for registration removal if criteria are met.

II. Present Situation:

Registration of Sexual Predators and Sexual Offenders: General Information

Florida law 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,¹ 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 Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- is subject to civil commitment.²

The FDLE classifies a person as a sexual offender if the person:

- has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- establishes or maintains a Florida residence and is subject to registration and/or community/public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- on or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.³

Requirements for in-person registration and reregistration 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, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ. The DOC and DJJ are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

¹ See ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

² See s. 775.21, F.S.

³ See ss. 943.0435 and 985.4815, F.S.

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.⁴ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.⁵

Florida's registry laws meet minimum federal requirements. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),⁶ 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' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.⁷ States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented SORNA.⁸ Florida was the third state to do so.⁹

Registration and Reregistration Requirements

Reporting requirements and time periods for reporting differ depending upon whether or not the registrant (sexual predator or sexual offender) is under DOC or DJJ custody or supervision, under the custody of a private correctional facility, under the custody of a local jail, under federal supervision, or under none of these custody or supervision statuses. In describing the registration and registration process, this analysis focuses on the registrant who is in none of these custody or supervision statuses and resides in Florida. However, staff notes that any registrant released from custody without a subsequent period of supervision would be subject to this process, and registrants under DOC or DJJ supervision would be subject to a registration and reregistration process substantially similar to the process described.

The registrant must initially report in person to the local sheriff's office within 48 hours of:

- establishing or maintaining a residence in Florida (sexual predators and sexual offenders);
- a designation by the court that the registrant is a sexual predator;
- release from custody or supervision (sexual offenders); or

⁴ 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. Florida Department of Law Enforcement, About Us, <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on January 2, 2014).

⁵ Link to the state public registry webpage: http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWA5HTSbLUQVw__ (last visited on January 2, 2014).

⁶ P.L. 109-248 (July 27, 2006).

⁷ United States Department of Justice, Dru Sjodin National Sex Offender Public Website, <http://www.nsopw.gov/Core/Portal.aspx> (last visited on January 2, 2014).

⁸ This standard is satisfied if a jurisdiction carries out SORNA requirements (as interpreted and explained by DOJ guidelines). Substantial implementation does not necessarily mean full implementation. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, "Jurisdictions that have substantially implemented SORNA," http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on January 2, 2014).

⁹ Florida Department of Law Enforcement, Press Release, "Governor Crist Announces Florida's Implementation of the Adam Walsh Act" (May 18, 2010), <http://www.fdle.state.fl.us/Content/News/2010/May-2010/Governor-Crist-Announces-Florida%E2%80%99s-Implementation-.aspx> (last visited on January 2, 2014).

- conviction, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).¹⁰

At this initial registration, registrants must provide:

- specified personal identification information;
- social security number;
- address and telephone numbers (home and cellular);
- photograph and fingerprints;
- electronic mail address and any instant message name;
- occupation and place of employment; and
- date and place of each conviction and a brief description of the crime or crimes committed.¹¹

After initial reporting, registrants must report in person to a driver's license office and provide proof of initial registration to secure or renew a driver's license or identification card. Each time the registrant's driver's license or identification is subject to renewal, and within 48 hours after any change in residence or the registrant's name, the registrant must report in person to the driver's license office.¹²

All sexual predators and some sexual offenders are required to reregister with their local sheriff four times a year. All other sexual offenders are required to reregister twice a year.¹³

Additionally, the following events are subject to expedited reporting to the sheriff:

- enrolling, obtaining employment, or carrying on a vocation at a Florida institution of higher education (including changes to this information);
- electronic mail address and instant message names prior to their use;
- vacating a residence without having another residence;
- remaining at a residence the registrant has reported he or she will vacate;
- intending to reside in another state or non-Florida jurisdiction;
- remaining in Florida after reporting the intent to establish a residence in another state or non-Florida jurisdiction; and
- living in another state but working or attending school in Florida.¹⁴

Agency Reporting of Information Regarding Sexual Predators and Sexual Offenders

The DOC must report to the FDLE certain personal information regarding a sexual offender who is:

- being released after serving a period of incarceration; or

¹⁰ See ss. 775.21(6)(e) and 943.0435(2)(a), F.S.

¹¹ See ss. 775.21(6)(a) and (e) and 943.0435(2)(a) and (b), F.S.

¹² See ss. 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

¹³ See ss. 775.21(8) and 943.0435(14), F.S.

¹⁴ See ss. 775.21(6)(g)2.–4., (i), and (j) and 943.0435(2)(b)2. and (4)(b)–(d), (7), and (8), F.S.

- in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.¹⁵

The DJJ must report to the FDLE certain personal information regarding a sexual offender who is:

- released from DJJ residential commitment; or
- under DJJ supervision but who is not committed.¹⁶

Prohibitions and Penalties

Certain sexual predators are prohibited from working or volunteering at places where children regularly congregate. A violation of this prohibition is a third degree felony.¹⁷

It is a second degree felony for a registrant to report that he or she intends to or did vacate a residence but remains at the residence without reporting this information.¹⁸

It is a third degree felony for a registrant to fail to report his or her intent to establish a residence in another state or jurisdiction.¹⁹ It is a second degree felony for a registrant to report his or her intent to establish a residence in another state or jurisdiction but remain in this state without reporting that information.²⁰

It is a third degree felony for a registrant to fail to comply with registration requirements.²¹

Removal of Registration Requirement

Generally, sexual predators and sexual offenders are subject to lifetime registration, unless they receive a full pardon or have a conviction set aside for a registration-qualifying offense.²² However, some sexual offenders may petition under s. 943.0435, F.S., for removal of registration requirements if they have been released from the latest sanction for at least 25 years, are arrest-free since release, and do not have an adult conviction for a disqualifying offense.²³

Additionally, a small number of registrants who were teenagers or young adults when they committed their offense may qualify for registration removal under s. 943.04354, F.S. (which is sometimes referred to as the "Romeo and Juliet" statute). A sexual predator or sexual offender who qualifies under the statute may move or petition for removal of registration requirements.

¹⁵ See ss. 944.606 and 944.607, F.S.

¹⁶ See ss. 985.481 and 985.4815, F.S.

¹⁷ Section 775.21(10)(b), F.S.

¹⁸ See ss. 775.21(6)(g)3. and (10)(a) and 943.0435(4)(c), F.S.

¹⁹ See ss. 775.21(6)(i) and (10)(a) and 943.0435(7) and (9)(a), F.S.

²⁰ See ss. 775.21(6)(j) and (10)(a) and 943.0435(8) and (9)(a), F.S.

²¹ See ss. 775.21(10)(a); 943.0435(9)(a) and (14)(c)4.; 944.607(10)(a) and (13)(c)4.; and 985.4815(9), (10)(a), and (13)(b)4., F.S.

²² See ss. 775.21(6)(l) and 943.0435(11), F.S.

²³ Section 943.0435(11), F.S.

Qualifying criteria are:

- a qualifying sex offense;
- registration is based solely on that offense;
- the registrant was not more than 4 years older than the victim of that offense; and
- the victim was 14-17 years of age when that offense was committed.

The court may grant the motion or petition if it finds that these criteria are met and registration removal will not conflict with federal law.²⁴

III. Effect of Proposed Changes:

The bill makes numerous changes to Florida laws relevant to registration of sexual predators and sexual offenders (“registrants”), including, but not limited to, adding additional information that must be provided by registrants, adding additional offenses that qualify an offender for registration, punishing noncompliance with registration requirements, and modifying the process for seeking removal of registration requirements. The bill takes effect on October 1, 2014.

Adds Registration-Qualifying Offenses (Sections 1, 2, and 6)

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to expand registration-qualifying offenses to include:

- sexual misconduct between an employee of the Agency for Persons with Disabilities (APD) (or another covered person) and an individual with a developmental disability;²⁵
- sexual misconduct between a DCF employee (or other specified employee) and a patient;²⁶ and
- sexual misconduct between an APD/DCF employee (or another covered person) and a forensic client.²⁷

Adds Information Registrants Must Report (Sections 1, 2, 6, and 7)

The bill amends ss. 775.21, 943.0435, 944.607, and 985.481, F.S., to require registrants to provide additional information as part of the registration/reregistration process, including:

- the make, model, color, registration number, and license tag number of all vehicles that are owned by the registrant and all vehicles that are owned by a person who resides with the registrant and that may be operated by the registrant;
- Internet identifiers (prior to their use);

²⁴ Federal conflict may occur if the sex offense doesn’t fall within a “consensual sexual conduct” exception to SORNA’s registration requirements. SORNA does not require registration if two persons 13 years of age or older engage in consensual sexual conduct and no more than 4 years separates their ages. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, “SORNA,”

<http://www.ojp.usdoj.gov/smart/sorna.htm#consensualconduct> (last visited on January 2, 2014).

²⁵ Section 393.135(2), F.S.

²⁶ Section 394.4593(2), F.S.

²⁷ Section 916.1075(2), F.S.

- palm prints;
- passports;
- professional license information;
- immigration status information; and
- volunteer status at a Florida institution of higher education.

Requires Registrants Who Can't Procure a Driver's License/State ID to Report Information (Sections 1 and 2)

The bill amends ss. 775.21 and 943.0435, F.S., to require registrants who are 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. This information is reported to the sheriff's office in the county where the registrant resides or is located and the information must include a confirmation that the registrant reported the information to the DHSMV.

Requires Registrants Intending to Reside in Another Country to Report Information (Sections 1 and 2)

The bill amends ss. 775.21 and 943.0435, F.S., to require registrants who intend to establish a residence in another country to report in person to the sheriff of the county of current residence within 21 days before their 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. Further, registrants who remain in Florida after previously reporting an intent to reside in another country must report their intent to remain in Florida to the sheriff who received the previous report. This reporting must occur within 48 hours after the date the registrant indicated he or she would leave Florida.

Prohibits and Punishes Certain Acts (Sections 1, 2, 6, and 9)

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to provide that it is:

- a second degree felony for a registrant who reports his or her intent to establish a residence in another country to remain in Florida without reporting to the sheriff this information;
- a third degree felony to fail to report all required Internet identifiers prior to use; and
- a third degree felony to knowingly provide false registration information by act or omission.

The bill amends s. 921.0022, F.S., to update descriptive language in the offense severity ranking chart of the Criminal Punishment Code to reflect these changes.

Reports Internet Identifiers to Commercial Social Networking Websites (Section 4)

The bill amends s. 943.0437, F.S., to authorize the FDLE to provide information on Internet identifiers maintained as part of the registry to commercial social networking websites or third parties designated by those websites. This information may be used by those websites to compare registered users and screen potential users of the websites. The websites are not subject

to civil liability 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 registry.

Reports Sexual Offender Information to the FDLE (Sections 5 and 7)

The bill amends ss. 944.606 and 985.481, F.S., which require the DOC and the DJJ to notify the FDLE of certain information regarding released sexual offenders, to:

- include the previously mentioned “sexual misconduct” offenses to the definition of “sexual offender” in that statute; and
- require the DOC and the DJJ to report palm prints; Internet identifiers; professional licenses, if known; passport information; and immigration status information.²⁸

Allows Additional Sexual Offenders to Petition for Registration Removal if Criteria are Met (Sections 2 and 3)

The bill amends s. 943.0435, F.S., to authorize sexual offenders to petition the court for removal of the registration requirement after 25 or 15 years have elapsed since the sexual offender’s registration period began if certain criteria are met. While some sexual offenders would be eligible under current law to petition after his 25-year period elapsed, others would not be eligible by changes made by the bill. For example, a sexual offender must remain arrest-free during the 25-year period. Under the bill, this requirement is removed.

Petition for Registration Removal after 25 Years

The bill authorizes a sexual offender to petition for removal of registration requirements if 25 years have elapsed since the sexual offender’s registration period began for the most recent registration-qualifying conviction or juvenile adjudication²⁹ and the following criteria are met:

- during the 25 years preceding the petition, there was no conviction or juvenile adjudication resulting in more than one-year imprisonment;
- all sanctions for registration-qualifying offenses were successfully completed;
- registration was not based upon an adult conviction for an offense for which registration removal is prohibited;³⁰ and
- pertinent only to sexual offenders whose requirement to register is based on a conviction in another state, registration is not required in that state.

Petition for Registration Removal after 15 Years

An exception to the 25-year requirement is a registration-qualifying adult conviction of certain sex offenses. Specifically, a sexual offender may petition the court for removal of registration requirements if 15 years have elapsed since the sexual offender’s registration period began for an

²⁸ The DJJ must also report vehicle information.

²⁹ The offenses pertinent to juvenile adjudication are listed in s. 943.0435(1)(a)1.d., F.S.

³⁰ Removal of registration requirement is prohibited if the adult conviction was for: kidnapping; sexual battery; lewd battery under 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; lewd molestation under 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; any attempt or conspiracy to commit any of these offenses; or a violation of a similar law of another jurisdiction.

adult conviction for committing, attempting to commit, or conspiring to commit false imprisonment or possession of materials showing sexual conduct by a child (or a violation of a similar law of another jurisdiction) and the offender meets all of the previously-described criteria applicable to a conviction for which the 25-year period would apply.

A sexual offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to chapter 985, F.S., or committed to a residential program.

The bill also amends s. 943.04354, F.S. (the "Romeo and Juliet" statute), which authorizes sexual predators and sexual offenders who committed certain sex offenses as young adults or teenagers, to petition for removal of registration requirements if certain criteria are met. The major substantive changes the bill makes to the statute include:

- changing the victim age criterion so that the victim may be as young as 13 years of age (current law: 14 years of age) when the offense was committed;
- changing the offender age criterion so that the offender may be as old as 18 (current law: 17 years of age) when the offense was committed;
- authorizing convictions and juvenile adjudications of laws of other jurisdictions to be considered as qualifying offenses if they are similar to Florida qualifying offenses; and
- authorizing the FDLE to contest the motion for removal of the registration requirements.

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:

Impact to FDLE

The Florida Department of Law Enforcement (FDLE) has already submitted Legislative Budget Request (LBR) Issue #3004500 “Support Critical FDLE Information Systems” that includes 2 Systems Analysts positions (one recurring and one non-recurring) for the sexual offender/predator registry. According to the FDLE, “the recurring position is to provide support for the additional functionality and enhancements that have been added and absorbed by the FDLE over the past 4 to 5 years. The non-recurring position is to provide further development/enhancements to the registry that improve data sharing, data accuracy, automation of manual processes as well as gaps identified by local law enforcement having evolved from previous legislative changes that were made and now identified as issues.”

The LBR was submitted prior to consideration of any potential fiscal impact of the bill. The FDLE has indicated that most of the changes to the bill are to add additional data to the existing registry. According to the FDLE, these changes could be accomplished using existing fields and data could be collected but the FDLE does not believe that the data necessarily would be “in a usable format for law enforcement to share.” Accordingly, the FDLE has provided two options for funding the impact on the department of implementing provisions of the bill:

Option 1: Amend the LBR to make the second System Analyst position recurring. This would not add additional costs for Year One of the LBR, but would require continued funding in Year 2 and beyond. The FDLE indicates that this option would allow continuing adjustments to the registry “as challenges in implementation are identified by law enforcement and prosecutors and as needs for the successful investigation and identification of offenders who are not complying are detected.” The department believes this option would allow it to “provide timely, accurate data” to all partners and to provide a “usable and searchable format for not only registration and accountability of offenders but for investigative purposes in missing children and sexual battery investigations.”

Option 2: Add a second non-recurring programmer in addition to the new recurring and non-recurring programmer provided for in the LBR. The FDLE believes this option would permit additional training and programming necessary to “make the changes to the system” required by the bill. However, the FDLE analysis does not specifically identify what the changes would provide as an end product. The option would require an appropriation of \$150,000 to allow for training and 1271 hours of programming.³¹

³¹ Analysis of SB 528 (January 7, 2014), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

Impact to the Courts

According to the Office of the State Courts Administrator (OSCA), “there were fewer than 100 failure-to-register cases filed annually in each of the past two years.” In regard to the fiscal impact of the bill on the state courts system, the OSCA states that this impact “cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload” but “the anticipated impact on the expenditures of the State Courts System will be minimal.” The OSCA indicates that jury instructions will need to be revised.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21, 921.0022, 943.0435, 943.04354, 943.0437, 944.606, 944.607, 985.481, and 985.4815.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³² Analysis of SB 528 (January 9, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).