

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7025 PCB CRJS 14-04 Sex Offenses

SPONSOR(S): Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; Eagle and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee	26 Y, 0 N, As CS	McAuliffe	Leznoff
2) Judiciary Committee	15 Y, 0 N, As CS	Cunningham	Havlicak

SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual predators and offenders to bring them further in line with the federal Adam Walsh Act. Specifically, the bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the following offenses to the list of offenses that qualify a person as a sexual predator and sexual offender:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also:

- Requires a person petitioning for a name change to indicate whether he or she has ever been required to register as a sexual predator or offender;
- Requires the clerk to electronically notify the Florida Department of Law Enforcement (FDLE) within 2 business days after the filing of a final name change judgment if the petitioner is required to register as a sexual predator or offender;
- Requires sexual predators and offenders to provide the sheriff and FDLE any Internet identifier the offender uses and defines the term "Internet identifier;"
- Requires sexual predators and offenders to provide information about their passport, immigration status, vehicles, professional licenses, and other specified information to the sheriff as part of the registration process;
- Requires sexual predators and offenders to report to the sheriff within 48 hours of any change in their transient residence, and every 30 days thereafter;
- Adds to the list of places in which a person may be prosecuted for failing to comply with registration requirements;
- Specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register;
- Specifies that 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; and
- Makes corrections to the offense severity ranking chart.

The bill will likely have an insignificant negative impact on state prison beds and on FDLE. See fiscal section.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predator Qualifying Offenses (Section 2)

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - Section 794.011, F.S. (sexual battery);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 847.0145, F.S. (selling or buying of minors); or

2. Any felony violation, or attempt thereof, of:
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - Section 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;¹
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - Section 825.1025(2)(b), F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0135(5), F.S. (computer pornography);
 - Section 847.0145, F.S. (selling or buying of minors); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and

- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

Effect of the Bill

The bill amends s. 775.21, F.S., to add the following qualifying offenses to the list of offenses contained in 2. (enumerated above):

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill changes the reference to s. 847.0135(5), F.S., in the above list to "s. 847.0135, F.S., excluding s. 847.0135(6), F.S." As a result, all of the computer-related sexual offenses in s. 847.0135, F.S., are qualifying offenses, except for subsection (6), which prohibits an owner or operator of a computer online service to knowingly permit a subscriber to use the service to commit a violation of the statute. The bill also changes the reference to s. 825.1025(2)(b), F.S., in the above list to "s. 825.1025, F.S.," which will include all lewd and lascivious offenses against the elderly or disabled as qualifying offenses.

¹ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

Sexual Offender Qualifying Offenses (Sections 5, 8, and 9)

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

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian;
 - Section 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
 - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
 - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
 - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction² imposed for any conviction of an offense described above.

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

Effect of the Bill

The bill amends the definition of the term “sexual offender” in ss. 943.0435, 944.606, and 944.607, F.S., to add the following qualifying offenses:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

Sexual Predator and Sexual Offender Registration (Sections 2, 4, 5, 8, 9, 10, and 11)

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.³ A sexual predator or sexual offender must comply

² A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

³ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

with a number of statutory registration requirements.⁴ Failure to comply with these requirements is generally a third degree felony.⁵

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁶ During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department, who then provides the information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.⁷

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.⁸ For example, a predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.⁹ In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.¹⁰

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to require sexual predators and offenders to provide the following registration information:

- Information about any tattoos or other identifying marks the offender may have.
- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- Palm prints.
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.
- Information about any professional licenses the offender may have.
- Whether the offender is volunteering at an institution of higher education.

The bill also requires sexual predators and offenders to:

- Provide the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; and
- Report in person to the sheriff's office within 48 hours after any change in vehicles owned to report such changes.

"Vehicles owned" is defined as any motor vehicle that is registered, co-registered, leased, titled, or rented by a sexual predator or offender; a rented vehicle that a sexual predator or offender is an authorized driver; or a vehicle for which a sexual predator or offender is insured as a driver. The term includes any motor vehicle which is registered, co-registered, leased, titled, or rented by a person or persons residing at a sexual predator or offender's permanent residence for 5 or more consecutive days.

The bill amends s. 943.043, F.S., to prohibit FDLE from displaying information regarding a vehicle that is owned by a person who is not required to register as a sexual offender or predator on the public registry.

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

⁴ *Id.*

⁵ Sections 775.21(10) and 943.0435(14), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁶ See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

⁷ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

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

Name Changes (Section 1)

Section 68.07, F.S., establishes criteria for changing one's name. Before the court hears a petition for a name change, the petitioner's fingerprints must be taken and submitted to the Department of Legal Affairs (DLA) and the Federal Bureau of Investigation for a state and national records check. DLA must submit the results to the clerk of court.¹¹ Each petition must be verified and reflect certain information (e.g., the petitioner's date, place of birth, occupation, etc.).¹² Upon the filing of a final judgment, the clerk must send the judgment to FDLE, who must then send it on to DHSMV.¹³

Sexual offender and predators are required to provide their name during the registration process, and must report any change in their name to DHSMV within 48 hours of the change.¹⁴

Effect of the Bill

The bill amends s. 68.07, F.S., to require:

- The state and national records check conducted by DLA to indicate whether the petitioner has registered as a sexual predator or offender;
- The petition to indicate whether the petitioner has ever been required to register as a sexual predator or offender;
- The clerk to send the judgment to FDLE within 5 business days after the filing of the final judgment;
- The clerk to electronically notify FDLE within 2 business days after the filing of the final judgment if the petitioner is required to register as a sexual predator or offender;
- DHSMV to monitor the records of sexual predators and offenders and to notify FDLE if the sexual predator or offender does not obtain a replacement driver license or identification card within the required time; and
- FDLE to notify law enforcement agencies of a sexual predator or offender's failure to comply with registration requirements.

Registration - Instant Message Name (sections 2, 5, 7, 8, 9, 10, and 11)

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.¹⁵

Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹⁶

¹¹ Section 68.07(2), F.S.

¹² Section 68.07(3), F.S.

¹³ Section 68.07(6), F.S.

¹⁴ Sections 775.21(6)(g) and 943.0435(4)(a), F.S.

¹⁵ See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹⁶ FDLE maintains an online system through which sexual predators and offenders can update their instant message name information.

Sections 775.21 and 943.0435, F.S.

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

Effect of the Bill

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

The bill also replaces the term “instant message name” with the term “Internet identifier” in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.¹⁷

Registration – Transient Residences (Sections 2 and 5)

As noted above, sexual predators and offenders must provide their addresses as part of the registration process. This includes the addresses of the offender’s permanent,¹⁸ temporary,¹⁹ and transient residences. “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.²⁰ Offenders must report to DHSMV within 48 hours of any change in their residence.²¹

Effect of the Bill

The bill requires sexual predators and offenders to report in person at the sheriff’s office in the county in which he or she is located within 48 hours after establishing a transient residence. Thereafter, they must report every 30 days while maintaining a transient residence. When reporting, they must provide the addresses and locations where he or she maintains a transient residence.

The bill requires each sheriff’s office to establish procedures for reporting transient residence information, to report this information to FDLE within 2 business days, and to notify transient registrants to report transient address information. Sheriff offices are authorized to coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration.

Failing to Comply with Registration Requirements (Section 2, 3, and 5)

As noted above, sexual predators and offenders must comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony. Section 775.25, F.S., currently specifies that failing to comply with the registration requirements may be prosecuted for the act or omission in:

- The county in which the act or omission was committed;
- The county of the last registered address of the sexual predator or offender;

¹⁷ Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

¹⁸ Section 775.21(2)(k), F.S., defines “permanent residence” as a place where the person abides, lodges, or resides for 5 or more consecutive days.

¹⁹ Section 775.21(2)(l), F.S., defines “temporary residence” as a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person’s permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

²⁰ Section 775.21(2)(m), F.S.

²¹ Sections 775.21(6)(g) and 943.0435(4)(a), F.S.

- The county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or offender; or
- The county in which he or she was designated a sexual predator.

Effect of the Bill

The bill adds the following to the list of places in which a person may be prosecuted for failing to comply with registration requirements:

- The county where the sexual predator or offender was released from incarceration; and
- The county of the intended address of the sexual predator or offender as reported by the sexual predator or offender prior to his or her release from incarceration.

Removal of the Requirement to Register as a Sexual Offender (Sections 5 and 6)

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.²² However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

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

Effect of the Bill

The bill clarifies that a violation of s. 800.04(5)(c)2., F.S., disqualifies an offender from petitioning the court for removal from the registry if the court finds the offense involved *the use of force or coercion* and unclothed genitals or genital area. The bill permits the offender to petition for removal from the registry in the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred.

The bill also provides the following specifying when a sexual predator or offender's registration period commences:

- The registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register;

²² Sections 775.21(6) and 943.0435(11), F.S.

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

- 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;
- Except as provided below, if a sexual offender is only sentenced to a term of supervision for the most recent conviction that required the offender to register as a sexual offender or is only subject to a period of supervision for that conviction, the registration period begins when the term or period of supervision for that conviction begins;
- Except as provided below, if the sexual offender is sentenced to a term of supervision that follows a term of incarceration for the most recent conviction that required the offender to register as a sexual offender or is subject to a period of supervision that follows commitment to a residential program for that conviction, the registration period begins when the term or period of supervision for that conviction begins; and
- If a sexual offender is sentenced to a term of more than 25-years supervision for the most recent conviction that required the offender to register as a sexual offender, the sexual offender may not petition for removal of the requirement for registration as a sexual offender until the term of supervision for that conviction is completed.

Section 943.04354, F.S.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and
3. 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.

Subsection (2) of the statute provides that if a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or predator.²⁴ At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.²⁵

Subsection (3) of the statute specifies that a person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or predator.²⁶ The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.²⁷

²⁴ The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

²⁵ If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

²⁶ The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

²⁷ If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

Effect of the Bill

The bill makes a variety of changes to s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was convicted, regardless of adjudication, or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., 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 violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction;
2. (a) Was required to register as a sexual offender or predator solely on the basis of the conviction or adjudication described in 1.; or
(b) Was convicted, regardless of adjudication, or adjudicated delinquent of an offense in another jurisdiction that is similar to an offense listed in 1. and no longer meets the criteria for registration as a sexual offender under the laws of the jurisdiction where the similar offense occurred; and
3. Is not more than 4 years older than the victim of this violation who was 13 years of age or older but less than 18 years of age at the time the person committed this violation.

The bill amends s. 943.04354(2), F.S., to:

- Specify that the motion must be filed in the criminal division of the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred.
- Require persons convicted or adjudicated delinquent of an offense in another jurisdiction to provide the court written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
- Require that FDLE be given notice of the motion at least 3 weeks prior to the date of sentencing, disposition of the violation, or hearing on the motion (currently only the state attorney is required to be given notice).
- Require the court to instruct the moving party to provide FDLE with a certified copy of the order granting relief.

The bill also removes language requiring that the offense be committed on or after July 1, 2007, and repeals s. 943.04354(3), F.S. As a result, the registration removal provisions of s. 943.04354, F.S., will apply to all eligible sexual offenders, regardless of their offense date.

The Criminal Punishment Code - Offense Severity Ranking Chart (Section 12)

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.²⁸ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.²⁹ A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

A violation of s. 796.03, F.S. (procuring person under age of 18 for prostitution), is currently ranked in Level 7 of the ranking chart but is incorrectly described as "procuring any person under 16 years for prostitution."³⁰ Similarly, a violation of s. 787.02(3)(a), F.S. (false imprisonment of a child under 13 while committing other specified offenses) is ranked in Level 9 of the ranking chart, but is incorrectly listed as a first degree felony (the offense is a first degree felony punishable for life imprisonment).

Effect of the Bill

The bill amends the ranking chart to correct the above-described inaccuracies. The bill also ranks the offense of "knowingly providing false registration information by act or omission" in Level 7.

²⁸ Section 921.002, F.S.

²⁹ Section 921.0022, F.S.

³⁰ Section 921.0022(3)(g), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 68.07, F.S., relating to change of name.

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

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

Section 4. Amends s. 943.043, F.S., relating to toll-free telephone number; Internet notification; sexual predator and sexual offender information.

Section 5. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 6. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 7. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 8. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 9. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 10. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 11. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 12. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 13. The bill is effective October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on January 30, 2014, and determined that HB 7025 would have an insignificant impact on state prison beds. The possible prison bed impact on DOC resulted from the bill increasing the number of people subject to sex offender registration requirements and adding additional information that sexual predators and offenders must provide when registering (failure to register is generally an unranked third degree felony). The PCS imposes additional registration requirements related to transient residences and vehicles. While CJIC has not considered the PCS, the prison bed impact will likely remain insignificant.

FDLE reports that there are two options for implementing the bill. The first requires an additional Systems Analyst recurring position, while the second requires hiring a programmer (non-recurring) for approximately \$150,000.³¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

³¹ FDLE Analysis of PCB CRJS 14-04, dated January 13, 2014 (on file with the Criminal Justice Subcommittee).
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C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment to the PCB and reported the PCB favorably. The amendment defines the term “vehicles owned” and requires sexual offenders and predators to provide vehicle identification numbers (VIN) as part of the registration process.

On February 12, 2014, the Appropriations Committee adopted one amendment that provided a \$150,000 appropriation in non-recurring general revenue to FDLE for programming costs required by this bill.

On March 3, 2014, the Judiciary Committee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably. The PCS differed from CS/HB 7025 in that it:

- Added provisions relating to name change petitions;
- Added provisions requiring transient sexual predators and offenders to report to the sheriff every 30 days and within 48 hours after a change in transient address; and
- Removed provisions relating to removal from the sexual offender registry.

This analysis is drafted to the PCS as passed by the Judiciary Committee.