

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 699	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Internet Identifiers	117	Y's 0	N's
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Mariano and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/HB 701; CS/SB 684; CS/SB 686			

SUMMARY ANALYSIS

CS/CS/HB 699 passed the House on April 28, 2017, and subsequently passed the Senate on April 28, 2017. The bill revises law specifying requirements for sexual predators and sexual offenders to register their Internet identifiers.

Florida law currently requires sexual predators and sexual offenders to register their names, addresses, and other personal information, such as electronic mail addresses and Internet identifiers, with the Florida Department of Law Enforcement ("FDLE"), through the local sheriff's office.

During the 2016 Regular Session, the Legislature amended the definition of "Internet identifier" by expanding it to include all identifiers, such as usernames or screen names, used for any Internet communication. Before the legislation took effect, however, a group of plaintiffs filed a lawsuit arguing that the new definition violated the First Amendment and was overbroad and vague. Finding in favor of the plaintiffs, the court granted a preliminary injunction prohibiting enforcement of the new definition.

The bill amends the definition of "Internet identifier" to require registration of Internet identifiers used to send or receive "social Internet communication," rather than any Internet communication. The bill's definition of "social Internet communication" specifically excludes communication by a registrant on certain news websites, with governmental entities, or that is primarily for specified commercial transactions.

The bill also requires sexual predators and sexual offenders to report each Internet identifier's corresponding website homepage or application software name as part of registration and requires any change to an electronic mail address, Internet identifier, or related information or to be reported within 48 hours after using the address or identifier.

The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.

The bill was approved by the Governor on June 26, 2017, ch. 2017-170, L.O.F., and became effective on that date.

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

STORAGE NAME: h0699z1.CRJ

DATE: July 5, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Sexual Predators, Sexual Offenders, Social Networking, and the Internet

Currently, there are more than 3 billion people worldwide that have access to the Internet.¹ As of 2015, nearly two thirds of American adults use social networking sites (“SNS”) such as Facebook and similar sites to exchange information or communicate.² “Roughly eight-in-ten online Americans (79%) now use Facebook, a 7-percentage-point increase from a survey conducted at a similar point in 2015.”³

In the past several years, reports have indicated that sexual offenders and sexual predators use SNS to gain information about victims and make contact with them.⁴ In one study published in 2010 by the University of New Hampshire, researchers noted that there had been 503 arrests involving victims and the use of SNS by offenders. Of that number, an estimated 360 arrests (or 72 percent) involved the use of SNS to communicate with the victim.⁵ Further, an estimated 346 arrests (or 69 percent) were made in cases where offenders were using the victim’s SNS to access information about them.⁶

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 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,⁷ 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, and the Department of Children and Families.

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
- Was found to be a sexually violent predator in a civil commitment proceeding.⁸

A person is classified as a sexual offender if the person:

¹ Jacob Davidson, *Here’s How Many Internet Users There Are*, TIME MAGAZINE, May 26, 2015, available at <http://time.com/money/3896219/internet-users-worldwide/> (last viewed Mar. 3, 2017).

² Andrew Perrin, *Social Media Usage: 2005-2015, 65% of Adults Now Use Social Networking Sites – A Nearly Tenfold Jump in the Past Decade*, Pew Research Center, Oct. 8, 2015, available at <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/> (last viewed Mar. 3, 2017).

³ Shannon Greenwood, Andrew Perrin, and Maeve Duggan, *Social Media Update 2016, Facebook Usage and Engagement is on the Rise, While Adoption of Other Platforms Holds Steady*, Pew Research Center, Nov. 11, 2016, available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/> (last viewed Mar. 3, 2016).

⁴ Byron Acohido, *Sex Predators Target Children Using Social Media*, USA TODAY, Mar. 1, 2011, available at http://usatoday30.usatoday.com/tech/news/2011-02-28-online-pedophiles_N.htm (last viewed Mar. 4, 2017).

⁵ Kimberly J. Mitchell, Ph.D., David Finkelhor, Ph.D., Lisa M. Jones, Ph.D., and Janis Wolak, J.D., *Use of Social Networking Sites in Online Sex Crimes Against Minors: An Examination of National Incidence and Means of Utilization*, Journal of Adolescent Health, Jan. 2010, at 3, available at <http://www.unh.edu/ccrc/pdf/CV174.pdf> (last viewed Mar. 4, 2017).

⁶ *Id.*

⁷ ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

⁸ s. 775.21, F.S. (“The Florida Sexual Predators Act”).

- 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 or community or 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.^{9, 10}

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders, but the 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.

FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.¹¹ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.¹²

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"),¹³ 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 United States Department of Justice ("DOJ") maintains the Dru Sjojin National Sex Offender Public Website.¹⁴ States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.¹⁵ The DOJ has determined that Florida has substantially implemented SORNA.¹⁶ Florida was the third state to do so.¹⁷

⁹ ss. 943.0435 and 985.4815, F.S.

¹⁰ 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 DOC, also contain definitions of the term "sexual offender" along with qualifying offenses.

¹¹ FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. Florida Sheriffs manage in-person registration and reregistration. *See* Florida Department of Law Enforcement, *About Us*, Updated Oct. 1, 2016, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last viewed Feb. 20, 2017). FDLE maintains a database that allows members of the public to search for sexual predators and sexual offenders through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual predator or sexual offender. *See* FDLE Website at <http://offender.fdle.state.fl.us/offender/Search.jsp> (last viewed on Mar. 2, 2017).

¹² Link to FDLE's Public Offender Homepage, available at <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWASHTSbLUQVw> (last visited on Feb. 20, 2017).

¹³ Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16911 et seq.

¹⁴ United States Department of Justice, Dru Sjojin National Sex Offender Public Website, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on Feb. 20, 2017).

¹⁵ *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance ("JAG Program Sheet"), United States Department of Justice, available at http://www.asca.net/system/assets/attachments/4390/JAG_Fact_Sheet.pdf (last viewed Feb. 20, 2017).

¹⁶ 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, United States Department of Justice, *Jurisdictions that have substantially implemented SORNA*, available at http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on Feb. 20, 2017); *see also* Office of Justice Programs, United States Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending,

Specified Information at Time of Registration, Electronic Mail Addresses, and Internet Identifiers

Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is in or out of custody or supervision. Generally, the registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).¹⁸

Sections 775.21 and 943.0435, F.S., require sexual predators and sexual offenders to provide specified information at the time of initial registration. This includes:

- Name;
- Social security number;
- Age;
- Race;
- Sex;
- Date of birth;
- Height;
- Weight;
- Tattoos or other identifying marks;
- Hair and eye color;
- Photograph;
- Address of legal residences, including current, known, temporary, transient, or future;
- Electronic mail addresses and all Internet identifiers;
- Home and cellular telephone numbers;
- Employment information and other additional information;
- Vehicle information - make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned;
- Dates and places of conviction and related information such as fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender;
- Information regarding alien immigration status;
- Information regarding whether the offender is enrolled or employed by an institution of higher education; and
- Changes of status (change of address, change of employment, etc.)¹⁹

Among these requirements, s. 775.21(6)(g)5.a., F.S., provides: "A sexual predator shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers." Similarly, s. 943.0435(4)(e), F.S., provides: "A sexual offender shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers."

Registering, and Tracking ("SMART"), *SORNA Implementation Status*, available at <https://ojp.gov/smart/sorna-map.htm> (last viewed Feb. 20, 2017).

¹⁷ Elysa Batista, *Florida Becomes Third State to Comply with Sex Offender Tracking Law*, NAPLES DAILY NEWS, June 19, 2010, available at <http://archive.naplesnews.com/news/state/florida-becomes-third-state-to-comply-with-sex-offender-tracking-law-ep-394657717-343306372.html> (last viewed Feb. 20, 2017).

¹⁸ ss. 775.21(6)(e) and 943.0435(2)(a), F.S.

¹⁹ ss. 775.21(6)(a) and (6)(g)(5), and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

The requirement to register electronic mail addresses and instant messaging names has been in place since 2007.²⁰ The requirement to register Internet identifiers was added in 2014.²¹ The 2014 definition for the term “Internet identifier” provided that it meant “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).”^{22, 23}

In 2016, the Legislature enacted an expanded definition of the term “Internet identifier” and also required the collection of Internet identifiers associated with website or URL²⁴ or software applications. The amended definition of “Internet identifier,” which had an effective date of October 1, 2016, provides:

“Internet identifier” includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes.²⁵

Shortly before the amended definition of “Internet identifier” took effect, a group of plaintiffs, who had been convicted as sexual offenders, filed a lawsuit against the Commissioner of FDLE in federal court.²⁶ The plaintiffs argued that a preliminary injunction prohibiting enforcement of the 2016 definition should be granted because the definition violates the First Amendment and is unconstitutionally overbroad and vague. On September 27, 2016, the court granted the preliminary injunction, agreeing that the language is overbroad and vague and unconstitutionally requires an individual to either forego protected speech or run the risk of criminal prosecution.²⁷ However, the court noted that the injunction did not preclude enforcement of the 2014 definition of Internet identifier.²⁸

Effect of the Bill

The bill amends s. 775.21(2)(j), F.S., to specify a new definition of “Internet identifier.” Under the bill:

“Internet Identifier” means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or

²⁰ Ch. 2007-143, Laws of Fla.

²¹ Ch. 2014-5, Laws of Fla.

²² s. 775.21(2)(i), F.S. (2015).

²³ Section 943.0435(1)(e), F.S., provides that “‘Internet identifier’ has the same meaning as provided in s. [775.21](#).”

²⁴ “URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files).” See Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last viewed Feb. 17, 2017).

²⁵ Ch. 2016-104, Laws of Fla. (amending s. 775.21(2)(i), F.S. and renumbering it s. 775.21(2)(j), F.S.).

²⁶ The current Commissioner of FDLE is Richard “Rick” L. Swearingen, and the lawsuit was filed against the Commissioner acting in his official capacity, in the United States District Court for the Northern District of Florida, Tallahassee Division. The style of the case was *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS (N.D. Fla. Aug. 9, 2016), but was later changed to “*Delgado et al. v. Swearingen*.”

²⁷ Order Granting Preliminary Injunction, issued in *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS, at 6-11 (N.D. Fla. Sept. 27, 2016). The Order noted, in part, that the amended definition of Internet identifier “trenches on First Amendment rights and is unconstitutionally vague.” *Id.* at 11.

²⁸ *Id.* at 12.

other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph for such personal information.

Further, the bill amends s. 775.21(2)(m), F.S., to create a definition for the term “social Internet communication.” Under the bill:

"Social Internet communication" means any communication through a commercial social networking website, as defined in s. 943.0437, or application software. The term “social Internet communication” does not include any of the following: communication for which the primary purpose is the facilitation of commercial transactions involving goods or services; communication on an Internet website for which the primary purpose of the website is the dissemination of news; or communication with a governmental entity. For purposes of this paragraph, the term “application software” means any computer program designed to run on mobile devices such as smartphones and tablet computers which 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 through a forum, a chatroom, electronic mail, or an instant messenger.²⁹

The bill also requires sexual predators and sexual offenders to report each Internet identifier’s corresponding website homepage or application software name as part of registration and requires any change to an electronic mail address, Internet identifier, or related information or to be reported within 48 hours after using the address or identifier.

The bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have an impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An “indeterminate amount” means an unquantifiable increase in the need for prison beds.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have an impact on local government revenues.
2. Expenditures: The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

²⁹ The term “commercial social networking website” is defined to mean 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.” s. 943.0437(1), F.S.

³⁰2017 Criminal Justice Impact Conference, Conference Results, HB 699, *available at* <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB699.pdf> (last visited April 22, 2017).

