

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Sexual Offender Registration

SPONSOR(S): Clemons

TIED BILLS: **IDEN./SIM. BILLS:** SB 162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Frost	Hall
2) Justice Appropriations Subcommittee	10 Y, 0 N	Jones	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 943.0435, F.S., defines sexual offender, in relevant part, as a person who meets certain criteria, including that he or she has been:

- Convicted of committing, or attempting, soliciting, or conspiring to commit, a qualifying sexually-based criminal offense in Florida or a similar offense in another jurisdiction; and
- Released on or after October 1, 1997, from the sanction imposed for any conviction of a qualifying offense.
 - A sanction imposed in Florida 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.

Generally, failing to comply with sexual offender registration requirements is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.

In 2004, a jury convicted Ray La Vel James of attempted lewd and lascivious molestation of two young girls. The judge in Mr. James's case imposed the maximum prison term of 15 years and a fine of \$10,000. Mr. James was released from prison in 2016 and refused to register as a sexual offender. After being charged with two counts of failing to register as a sexual offender, Mr. James argued that he is not required to register because he is not released from the sanction imposed for his offense as long as he still owes a fine. The trial court and Florida's Second District Court of Appeal agreed that because Mr. James still owes the \$10,000 fine, he has not been released from the sanctions imposed in his case, and therefore does not meet the definition of a sexual offender required to register under s. 943.0435, F.S.

Relying on this ruling, sexual offenders throughout the state may refuse to pay outstanding fines in an attempt to avoid complying with registration requirements. Moreover, a sexual offender currently registering who still owes a fine may stop registering and attempt to challenge his or her requirement to register on the basis of the Second District's ruling.

HB 193 amends s. 943.0435, F.S., to clarify that a sexual offender with any unreleased sanctions related to his or her conviction or who fails to complete a financial obligation imposed is not exempt from sexual offender registration requirements. The bill specifies that a financial obligation includes any fine, fee, or other monetary obligation resulting from any sanction.

The bill may have an insignificant, yet indeterminate, negative fiscal impact on state and local government expenditures as the bill will necessitate changes to state and local sexual offender documentation, policies and procedures, training materials, forms, and websites. However, any minimal impacts can likely be absorbed within existing resources.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Sexual Offenders and Sexual Predators

Sexual Offenders

Under Florida law, a person is a sexual offender if he or she is convicted of a qualifying offense and:

- Was released on or after October 1, 1997, from the criminal sanction resulting from a qualifying conviction.¹ 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.
- Establishes or maintains a residence in Florida and has not been designated a sexual predator by a court of this state but has been designated a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction, if such designation subjects or would subject him or her to registration or public notification in that state or jurisdiction.²
- Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a qualifying conviction.³
- Has been adjudicated delinquent on or after July 1, 2007, for a qualifying offense, if the juvenile was at least 14 years old at the time he or she committed the offense.⁴
- Is in the custody or control of, or under the supervision of, the Department of Corrections (DOC) or is in the custody of a private correctional facility.⁵

Qualifying convictions for sexual offender designation include:

- Sexual misconduct with an individual with a developmental disability;⁶
- Sexual misconduct with a mental health patient by an employee;⁷
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;⁸
- Luring or enticing a child, with a prior sexual conviction;⁹
- Human trafficking;¹⁰
- Sexual battery;¹¹
- Unlawful sexual activity with minors;¹²
- Lewd or lascivious battery, molestation, conduct, or exhibition;¹³

¹ S. 943.0435(1)(h)1.a.(II), F.S.

² S. 934.0435(1)(h)1.b., F.S.

³ S. 934.0435(1)(h)1.c., F.S.

⁴ S. 934.0435(1)(h)1.d., F.S.

⁵ S. 944.607(1)(f), F.S.

⁶ S. 393.135(2), F.S.

⁷ S. 394.4593(2), F.S.

⁸ Ss. 787.01 and 787.02, F.S.

⁹ S. 787.025(2), F.S.

¹⁰ Ss. 787.06(3)(b), (d), (f), or (g), F.S.

¹¹ S. 794.011, excluding s. 794.011(10), F.S.

¹² S. 794.05, F.S.

¹³ S. 800.04, F.S.

- Video voyeurism with a prior video voyeurism conviction;¹⁴
- Lewd or lascivious offense on an elderly person;¹⁵
- Sexual performance by a child;¹⁶
- Providing obscene materials to a minor;¹⁷
- Computer pornography involving minors;¹⁸
- Soliciting a minor over the Internet;¹⁹
- Traveling to meet minors;²⁰
- Lewd or lascivious exhibition over the Internet;²¹
- Transmission of child pornography by electronic device or equipment;²²
- Transmission of material harmful to minors;²³
- Selling or buying minors to engage in sexually explicit conduct;²⁴
- Racketeering involving at least one sexual offense;²⁵
- Sexual misconduct with a forensic client;²⁶ and
- Sexual misconduct by an employee on a juvenile offender.²⁷

Qualifying delinquency adjudications for sexual offender designation include:

- Sexual battery;²⁸
- Lewd or lascivious battery by encouraging, forcing, or enticing any person under 16 years old to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,²⁹ if either the:
 - Victim is under 12 years old; or
 - Court finds sexual activity by the use of force or coercion;
- Lewd or lascivious molestation against a victim less than 12 years old,³⁰ if the court finds molestation involving unclothed genitals;
- Lewd or lascivious molestation against a victim at least 12 years old but less than 16 years old,³¹ if the court finds both:
 - Use of force or coercion; and
 - Unclothed genitals.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

¹⁴ S. 810.145(8), F.S.

¹⁵ S. 825.1025, F.S.

¹⁶ S. 827.071, F.S.

¹⁷ S. 847.0133, F.S.

¹⁸ S. 847.0135(2), F.S.

¹⁹ S. 847.0135(3), F.S.

²⁰ S. 847.0135(4), F.S.

²¹ S. 847.0135(5), F.S.

²² S. 847.0137, F.S.

²³ S. 847.0138, F.S.

²⁴ S. 847.0145, F.S.

²⁵ S. 895.03, F.S.

²⁶ S. 916.1075(2), F.S.

²⁷ S. 985.701(1), F.S.

²⁸ S. 794.011, F.S.

²⁹ S. 800.04(4)(a)2., F.S.

³⁰ S. 800.04(5)(c)1., F.S.

³¹ S. 800.04(5)(d), F.S.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;³²
- Capital, life, or first degree felony sexual battery;³³
- Capital, life, or first degree felony lewd or lascivious battery or molestation;³⁴
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;³⁵
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;³⁶ or
- A conviction for a similar offense committed in another jurisdiction.³⁷

The court must make written findings designating a person who meets the criteria as a sexual predator.³⁸

Registration Requirements for Sexual Offenders and Sexual Predators

Initial Registration

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing a permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of DOC or from the custody of a private correctional facility.³⁹

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility;⁴⁰
 - If the sexual predator is under DOC's supervision but not in custody, he or she must register within three days of the court designating him or her as a sexual predator;⁴¹
- With the custodian of the local jail, within three days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;⁴²
- In person at the sheriff's office in the county where:
 - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;⁴³ or
 - The sexual predator was designated a sexual predator within 48 hours after such finding is made.⁴⁴

Additionally, within 48 hours of registration, a sexual offender or a sexual predator who is not incarcerated and resides in the community must register in person at a driver license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and:

- Secure a Florida driver license, renew a Florida driver license, or secure an identification card, if otherwise qualified;
- Identify himself or herself as a sexual offender or sexual predator;

³² Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

³³ *Supra*, note 28.

³⁴ S. 800.04, F.S.

³⁵ *Supra*, note 24.

³⁶ S. 775.21(4)(a)1.b., F.S.

³⁷ S. 775.21(4), F.S.

³⁸ Ss. 775.21(4)(c) and 775.21(5), F.S.

³⁹ S. 943.0435(2)(a)1., F.S.

⁴⁰ S. 775.21(6)(b), F.S.

⁴¹ *Id.*

⁴² S. 775.21(6)(c), F.S.

⁴³ S. 775.21(6)(e)a., F.S.

⁴⁴ S. 775.21(6)(2)b., F.S.

- Provide his or her permanent, temporary, or transient residence; and
- Submit to a photograph.⁴⁵

Information Required for Registration

During his or her initial registration, the sexual offender or sexual predator must provide the following information:

- Name;
- Date of birth;
- Social Security number;
- Race;
- Sex;
- Height and weight;
- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints and palm prints;
- Photograph;
- Employment information;
- Address of permanent or legal residence;⁴⁶
- Address of any current temporary residence;⁴⁷
- Address, location, or description of any transient residence,⁴⁸ if the person does not have a permanent or temporary address;
- Dates of any current or known future temporary residence within the state or out of state;
- Make, model, color, vehicle information number, and license tag number of all vehicles owned;
- Home and cellular telephone numbers;
- Electronic mail addresses;
- Internet identifiers and each Internet identifier's corresponding website homepage or application software name;
- Date and place of each conviction and a brief description of the crime or crimes committed by the offender;
- Information about immigration status, if the person is an alien;
- Information about any professional licenses;
- Vehicle identification number, license tag number, registration number, and a description of a motor vehicle, trailer, mobile home, or manufactured home, if it is the person's residence;
- Hull identification number, manufacturer's serial number, name, registration number, and description of a vessel, live-aboard vessel, or houseboat, if it is the person's residence; and
- Enrollment, volunteer, or employment status at an institution of higher education and the name and address of the institution, if applicable.⁴⁹

⁴⁵ S. 775.21(6)(f)1., F.S.

⁴⁶ "Permanent residence" means a place where the person abides, lodges, or resides for three or more consecutive days. S. 775.21(2)(k), F.S.

⁴⁷ "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of three or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. S. 775.21(2)(n), F.S.

⁴⁸ "Transient residence" means a county where a person lives, remains, or is located for a period of three 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 does not have a specific street address. S. 775.21(2)(o), F.S.

⁴⁹ Ss. 775.21(6)(a) and 943.0435(2)(b), F.S.

Continuing Reporting Requirements

A sexual offender or sexual predator must report in person to reregister at specified intervals:

- Twice a year for most sexual offenders;⁵⁰
- Four times a year for all sexual predators, some sexual offenders, and all juvenile sexual offenders;⁵¹ or
- Every 30 days for a sexual offender or sexual predator with a transient residence.⁵²

A sexual offender or sexual predator must report the following information within 48 hours:

- In person, to the sheriff's office:
 - Change in the offender's permanent, temporary, or transient residence;
 - Change in the offender's name, by reason of marriage or other legal process;
 - When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
 - Change in vehicles owned; and
 - International and out-of-state travel information.⁵³
- In person, to the sheriff's office or through FDLE's online system:
 - Use of a new electronic mail address or Internet identifier;
 - Change to home or cellular telephone numbers;
 - Change to employment information; and
 - Change in status related to enrollment, volunteering, or employment at institutions of higher education.⁵⁴

Generally, failing to comply with registration requirements is a third degree felony,⁵⁵ punishable by up to five years in prison and a \$5,000 fine.⁵⁶

State v. James

In 2004, a jury convicted Ray La Vel James of attempted lewd and lascivious molestation, following an incident involving two young girls at a community pool in Hillsborough County.⁵⁷ Based on the "heinous" and "egregious" nature of the crimes, a judge imposed the maximum prison term of 15 years and a fine of \$10,000.⁵⁸ Mr. James was released from prison in November 2016 and later moved to Tampa, where he refused to register quarterly as a sexual offender, under s. 943.0435, F.S., and was subsequently charged with two counts of failing to register as a sexual offender.

Mr. James moved the trial court to dismiss the charges against him, contending that he was not released from the criminal sanctions resulting from his conviction, because he still owed the \$10,000 fine imposed. The trial court agreed and the Second District Court of Appeal also found that "Mr. James' entire 'sanction' for his conviction under section 800.04 consists of fifteen years' prison and a \$10,000 fine. Mr. James' release from incarceration has no effect on the \$10,000 fine, which is a portion of his sanction for his conviction. Accordingly, his sanction, as a whole, has not been released, and he does not qualify as a 'sexual offender' for purposes of reporting and registration under section 943.0435."⁵⁹

⁵⁰ S. 943.0435(14), F.S.

⁵¹ Ss. 775.21(8)(a) and 943.0435(14), F.S.

⁵² Ss. 775.21(6)(g)2.a. and 943.0435(4)(b)2., F.S.

⁵³ Ss. 943.0435(4)(e) and 775.21(6), F.S.

⁵⁴ *Id.*

⁵⁵ Ss. 775.082 and 775.083, F.S.

⁵⁶ Ss. 775.21(10) and 943.0435(9)(a), F.S.; but see, ss. 775.21(6)(f)3., 775.21(6)(j), 943.0435(4)(c), and 943.0435(8), F.S. (providing for circumstances in which failure to comply with registration requirements is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.).

⁵⁷ *State v. James*, 298 So.3d 90 (Fla. 2d DCA 2020), reh'g denied (July 7, 2020).

⁵⁸ Mark Puente, *Ruling allows Tampa man to avoid sex offender registration until he pays \$10K fine* (Jun. 9, 2020), <https://www.tampabay.com/news/crime/2020/06/09/ruling-allows-tampa-man-to-avoid-sex-offender-registration-until-he-pays-10k-fine/> (last visited Feb. 10, 2021).

⁵⁹ *State v. James*, 298 So.2d at 92

Relying on this ruling, sexual offenders throughout the state may refuse to pay outstanding fines in an attempt to avoid complying with registration requirements. Moreover, a sexual offender currently registering who still owes a fine may stop registering and attempt to challenge his or her requirement to register on the basis of the Second District's ruling.

Effect of Proposed Changes

HB 193 amends s. 943.0435, F.S., to clarify that a sexual offender who has any unreleased sanctions related to his or her conviction or who fails to complete a financial obligation imposed is not exempt from sexual offender registration requirements. The bill specifies that a financial obligation includes any fine, fee, or other monetary obligation resulting from any sanction.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant, yet indeterminate, negative fiscal impact on state government by necessitating updates to FDLE's statewide registration forms, e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website, and training materials.⁶⁰ However, any minimal impacts can likely be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on local government by necessitating updates to local law enforcement's sexual offender documentation, policies and procedures, and training materials.⁶¹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶⁰ Florida Department of Law Enforcement, Agency Analysis of 2021 House Bill 193, p. 3 (Jan 2021).

⁶¹ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires a person with any unreleased sanctions to register under s. 943.0435, F.S., with a sheriff's office, which may conflict with existing registration requirements under s. 944.607, F.S., which currently require sexual offenders serving a prison sentence or other term of supervision under the custody or control of DOC or a private facility to register with DOC.⁶²

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁶² *Id.* at p. 4