

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 234

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senators Book and Bradley

SUBJECT: Registration of Sexual Predators and Sexual Offenders

DATE: March 4, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 234 clarifies release from conviction sanctions for sexual offender reporting and registration purposes. Currently, a person convicted of a qualifying sexual offense must register as a sex offender upon release from a court imposed sanction. A Florida appellate court recently interpreted the word “sanction” to include any court imposed fines. As a result, the opinion allows a person, otherwise required to register as a sex offender, to forgo registration by refusing to pay any court imposed fine.

The bill provides legislative findings that the appellate court opinion interpreting the word “sanction” is contrary to legislative intent and that a person’s failure to pay a fine does not relieve him or her of the requirement to register as a sexual offender. The bill also specifies that the Legislature intends that a person must register as a sexual offender when he or she has been convicted of a qualifying offense and, on or after October 1, 1997, has:

- No sanction imposed upon conviction; or
- Been released from a sanction imposed upon conviction.

Consistent with these legislative findings and intent, the bill:

- Specifies that an offender who has been released on or after October 1, 1997, from a sanction imposed for any conviction for a qualifying sexual offense and who does not otherwise meet the criteria for registration as a sexual offender under ch. 944, F.S., or ch. 985, F.S., must register as a sexual offender;

- Amends the definition of “sanction” to exclude fines and to specify that “sanction” means probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility; and
- Provides that if no sanction is imposed the person is deemed to be released upon conviction.

Additionally, the bill:

- Codifies longstanding practice regarding the calculation of days for the purpose of the definitions of “permanent residence,” “temporary residence,” and “transient residence” but does not make any changes to how these types of residence are defined in current law;
- Authorizes sexual predators and sexual offenders to report vehicle information changes to the Florida Department of Law Enforcement’s (FDLE’s) online system;
- Authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the Department of Highway Safety and Motor Vehicles (DHSMV);
- Clarifies a registration requirement relating to the timing of reporting of a change of residence to another state or jurisdiction or international travel;
- Specifies that failure to report intended travel is punishable as provided; and
- Creates a process for a person to petition for relief from registration if the person’s requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.

According to the FDLE, the bill should not have a fiscal impact on the department. Although the bill authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV, it does not require the DHSMV to create this alternate method. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Florida’s Sexual Predator and Sexual Offender Registration Laws**

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex 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.<sup>1</sup> The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes<sup>2</sup> and are implemented through the combined efforts of the FDLE, all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Families.

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<sup>1</sup> Sections 775.21 and 943.0435, F.S.

<sup>2</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

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

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;<sup>3</sup>
- Has been convicted of a 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.<sup>4</sup>

A person is classified 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, 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 juvenile was 14 years of age or older.<sup>5</sup>

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.<sup>6</sup> 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 the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.<sup>7</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

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<sup>3</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>4</sup> Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

<sup>5</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

<sup>6</sup> All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

<sup>7</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Mar. 4, 2021).

### ***State v. James: Interpreting Release from Conviction Sanctions for Sexual Offender Reporting and Registration Purposes***

Recently, in *State v. James*,<sup>8</sup> the Florida Second District Court of Appeal upheld and affirmed a trial court order granting dismissal of charges against offender Ray La Vel James for failing to report quarterly as a sexual offender. James was sentenced to 15 years in state prison and a \$10,000 fine for a conviction for attempted lewd molestation. After James was released from prison, the State filed a two-count information charging James with failing to report in person quarterly to register as a sexual offender. James moved to dismiss the information, arguing that he was not required to register and report, notwithstanding his release from prison, because his \$10,000 fine had not yet been released or discharged. The trial court agreed and dismissed the charges. The State appealed this dismissal.

Currently, s. 943.0435(1)(h)1.a.(II), F.S., provides that a sexual offender who has been released on or after a specified date from the sanction imposed for any conviction of an offense described in s. 943.0435(1)(h)1.a.(I), F.S., is required to register as a sexual offender in Florida. Section 943.0435(1)(h)1.a.(II), F.S., also defines a sanction as including, but 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."

The appellate court found that James was not released from his \$10,000 fine and the fine remained outstanding. While the State argued that the statute did not require James to be released from both incarceration *and* the fine to qualify as a sexual offender, the appellate court rejected this argument, finding that the plain language of the statute did not accord with the State's interpretation of the language. The court held that since James had not completed his \$10,000 fine, "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."<sup>9</sup>

As of January 10, 2021, the FDLE has received inquiries from seven separate individuals requesting removal from the registry pursuant to the decision in *State v. James*. Six of these individuals did not meet the standard specified in the case and remain registered. One offender was removed after having met the standard in the case due to having an unpaid fine in relation to a qualifying offense.<sup>10</sup>

### **Residence Definitions**

Section 775.21, F.S., defines the terms "permanent residence," "temporary residence," and "transient residence" for the purpose of reporting residence information. Section 943.0435, F.S., also uses these definitions.<sup>11</sup>

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<sup>8</sup> *State v. James*, 298 So.3d 90 (Fla. 2d DCA 2020).

<sup>9</sup> *State v. James*, *supra*, at p.3.

<sup>10</sup> E-mail from Mary Coffee, Planning and Policy Administrator, Florida Department of Law Enforcement, (Feb. 10, 2021) (on file with the Senate Committee on Judiciary).

<sup>11</sup> Sections 775.21(2)(k), (n), and (o) and 943.0435(1)(f), F.S.

“Permanent residence” means a place where the person abides, lodges, or resides for 3 or more consecutive days.<sup>12</sup>

“Temporary residence” means 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 3 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.<sup>13</sup>

“Transient residence” means a county where a person lives, remains, or is located for a period of 3 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.<sup>14</sup>

### **FDLE’s Online System**

The FDLE is required to establish an online system through which sexual predators and sexual offenders may securely access, submit, and update all electronic mail addresses; Internet identifiers and each Internet identifier’s corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.<sup>15</sup>

A sexual predator or sexual offender must register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, with the FDLE through the FDLE’s online system or in person at the sheriff’s office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator or sexual offender is in the custody or control, or under the supervision, of the DOC, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, to the DOC before using such electronic mail addresses or Internet identifiers. If the sexual predator or sexual offender is in the custody or control, or under the supervision, of the DJJ, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, to the DJJ before using such electronic mail addresses or Internet identifiers.<sup>16</sup>

A sexual predator or sexual offender must register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education in the same manner previously described.<sup>17</sup>

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<sup>12</sup> Section 775.21(2)(k), F.S.

<sup>13</sup> Section 775.21(2)(n), F.S.

<sup>14</sup> Section 775.21(2)(o), F.S.

<sup>15</sup> Sections 775.21(6)(g)5.c. and 943.0435(4)(e)3., F.S.

<sup>16</sup> Sections 775.21(6)(g)5.a. and 943.0435(4)(e)1., F.S.

<sup>17</sup> Sections 775.21(6)(g)5.b. and 943.0435(4)(e)2., F.S.

Currently, the law does not specify that a sexual predator and sexual offender may report changes to vehicles owned through FDLE's online system. The FDLE notes that "[c]urrent law requires sexual offenders and predators to report in-person to the sheriff's office within 48 hours after any change in vehicle owned. While vehicle information is incredibly important to law enforcement, the mandate to have every change to this information reported in-person to the sheriff's office has created a significant burden."<sup>18</sup> Further, according to the FDLE, "[a]llowing registrants the option to report their vehicle information and address changes online will facilitate faster access to this critical information and reduce the impact on sheriff's offices."<sup>19</sup>

### **Reporting when Driver License or State Identification is Renewed and Reporting Change of Residence or Name**

Within 48 hours after initial registration with the sheriff's office, a sexual predator or sexual offender who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the DOC, must register in person at a driver license office of the DHSMV and present proof of registration unless a driver license or an identification card that complies with the requirements of s. 322.141(3), F.S., was previously secured or updated under s. 944.607, F.S.<sup>20</sup>

At the driver license office the sexual predator or sexual offender must do all of the following:

- If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card.
- Identify himself or herself as a sexual predator or sexual offender who is required to register, provide his or her place of permanent, temporary, or transient residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver license, a renewed license, or an identification card, and for use by the FDLE in maintaining current records of sexual predators. (There are registration requirements for other places of residence such as mobile homes and vessels.)
- Pay the costs assessed by the DHSMV for issuing or renewing a driver license or an identification card.
- Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.<sup>21</sup>

Each time a sexual predator's or sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the predator's or offender's driver license or identification card, within 48 hours after any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process, the predator or offender must report in person to a driver license office and is subject to the requirements previously described. The DHSMV must forward to the FDLE and the DOC all photographs and information provided by sexual predators or sexual offenders.<sup>22</sup>

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<sup>18</sup> *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>19</sup> *Id.*

<sup>20</sup> Section 775.021(6)(f) and 943.0435(3), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Sections 775.021(6)(g)1. and 943.0435(4), F.S.

A sexual predator or sexual offender who is unable to secure or update a driver license or an identification card with the DHSMV as previously described must also report any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the DHSMV. These reporting requirements do not negate the requirement for a sexual predator or sexual offender to obtain a Florida driver license or identification card.<sup>23</sup>

### **Reporting Residence in Another State or Jurisdiction and Travel**

A sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator or sexual offender 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure.<sup>24</sup>

The sexual predator or sexual offender must provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator or sexual offender must also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.<sup>25</sup>

The sheriff must promptly provide to the FDLE the information received from the sexual predator or sexual offender. The FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's or sexual offender's intended residence. The failure of a sexual predator or sexual offender to provide his or her intended place of residence is a third degree felony.<sup>26</sup>

A sexual predator or sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than Florida, or another country and later decides to remain in this state must, within 48 hours after the date upon which the sexual predator or sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual predator or sexual offender reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator or sexual offender that he or she intends to remain in this state, the sheriff must promptly report this information to the FDLE. A sexual predator or sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a

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<sup>23</sup> *Id.*

<sup>24</sup> Sections 775.21(6)(i) and 943.0435(7), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* A third degree felony is punishable by up to 5 years in state prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

jurisdiction other than Florida, or another country, but who remains in this state without reporting to the sheriff as previously described commits a second degree felony.<sup>27</sup>

### **Sexual Offender Registration Based on Out-of-State Conviction for Offense Not Similar to Florida Offense Requiring Registration and Not Public in Other State**

As previously noted, for purposes of sexual offender registration, the definition of “sexual offender” includes, but is not limited to, a person who establishes or maintains a residence in Florida and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.<sup>28</sup>

According to the FDLE, the criteria previously described apply to a person “based solely upon a requirement to register in another state for an offense that is *not* similar to a conviction offense requiring registration in Florida and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.”<sup>29</sup>

The FDLE has indicated concerns about the application of these criteria to such person. “As Florida does not have a non-public registry, such an individual’s registration information would be publicly available. From an equal protection standpoint, these circumstances may be found objectionable by the courts as the current laws treat similarly situated persons convicted in Florida differently than those convicted in other states. Not correcting this issue increases the risk that a court’s decision could impact the entire registry.”<sup>30</sup>

### **III. Effect of Proposed Changes:**

The bill, *which takes effect upon becoming a law*, amends s. 775.21, F.S. (sexual predator registration) and s. 943.0435, F.S. (sexual offender registration). The bill also reenacts numerous laws that reference these two statutes.<sup>31</sup>

#### **Clarifying Release from Conviction Sanctions for Sexual Offender Reporting and Registration Purposes**

The bill amends s. 943.0435, F.S., to clarify release from conviction sanctions for sexual offender reporting and registration purposes. Currently, a person convicted of a qualifying sexual offense must register as a sex offender upon release from a court imposed sanction. In *State v. James*,<sup>32</sup> the Florida Second District Court of Appeal recently interpreted the word “sanction” to

<sup>27</sup> Sections 775.21(6)(j) and (10) and 943.0435(8), F.S. A second degree felony is punishable by up to 15 years in state prison and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>28</sup> Section 943.0435(1)(h)1.b., F.S.

<sup>29</sup> *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>30</sup> *Id.*

<sup>31</sup> See “Statutes Affected” section of this analysis for a list of the reenacted statutes.

<sup>32</sup> See footnote 8, *supra*.



include any court imposed fines. As a result, the opinion allows a person, otherwise required to register as a sex offender, to forgo registration by refusing to pay any court imposed fine.

The bill provides legislative findings that the opinion in *State v. James* interpreting the word “sanction” is contrary to legislative intent and that a person’s failure to pay a fine does not relieve him or her of the requirement to register as a sexual offender pursuant to s. 943.0435, F.S. The bill also specifies that the Legislature intends that a person must register as a sexual offender pursuant to s. 943.0435, F.S., when he or she has been convicted of a qualifying offense and, on or after October 1, 1997, has:

- No sanction imposed upon conviction; or
- Been released from a sanction imposed upon conviction.

Consistent with these legislative findings and intent, the bill also amends s. 943.0435(1)(h)1.a.(II), F.S., to:

- Specify that an offender who has been released on or after October 1, 1997, from a sanction imposed for any conviction for a qualifying sexual offense and who does not otherwise meet the criteria for registration as a sexual offender under ch. 944, F.S., or ch. 985, F.S., must register as a sexual offender;
- Amend the definition of “sanction” to exclude fines and to specify that “sanction” means probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility; and
- Provide that if no sanction is imposed the person is deemed to be released upon conviction.

### **Codifying Longstanding Practice Regarding Calculation of Days for the Purpose of Residence Definitions**

The bill amends s. 775.21, F.S., to codify longstanding practice regarding the calculation of days for the purpose of the definitions of “permanent residence,” “temporary residence,” and “transient residence” but does not make any changes to how these types of residence are defined in current law. Section 943.0435, F.S., also uses these definitions. The definitions are relevant to sexual predators and sexual offenders reporting their residence and any change in residence.

The following language is added to the definitions of “permanent residence” and “temporary residence”:

In calculating days for [“permanent residence” and “temporary residence”], the first day a person abides, lodges, or resides at a place is excluded. Each day following the first day is counted. A day includes any part of a calendar day.<sup>33</sup>

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<sup>33</sup> In other words, a “day” is the same as a “calendar day,” which is from midnight to 11:59 p.m. It is not a 24-hour period that begins one day and ends the following day. It is not 11:00 p.m. on Monday to 10:59 p.m. on Tuesday. It is midnight on Monday to 11:59 on Monday.

The following language is added to the definition of “temporary residence”:

In calculating days for “transient residence,” the first day a person lives, remains, or is located in a county is excluded. Each day following the first day is counted. A day includes any part of a calendar day.

According to the FDLE, the previously-described language:

specifies the existing protocols and practices utilized with Florida registration laws for over two decades.

- A calendar day is a day; Midnight to 11:59pm, 365/366 days a year.
- Residing, abiding, lodging, or living for any part of a day at a location/address counts as one (1) day.
- Tracking other judicial rules and Florida Statutes, the first day at a newly established location is not counted in calculating the number of days to determine residency for the purposes of registration.
- The 48 hours to register a permanent, temporary, or transient residence begins after the third calendar day counted towards residency (i.e. the 4th day at the location) regardless of what time the person departs the residence on the third day or anytime afterwards.<sup>34</sup>

The FDLE provides the following additional comments regarding the protocols on calculating days and the language in the bill that codifies that protocol:

This protocol carries the benefits of eliminating any need or question regarding “stop-watch” timing or calculating across calendar days or time zones to determine residency on the part of those required to register or those tasked with enforcing or prosecuting registration laws.

Nothing precludes a person from registering a residence earlier, if more convenient for them, prior to remaining at a location/address for the 3 days establishing the location as a registerable residence or the 48 hour reporting period that follows.

The language does not in any way alter the existing definitions of permanent, temporary or transient residences. The definitions for what qualify as a permanent, temporary and transient residence remain the same.<sup>35</sup>

### **Authorizing Sexual Predators and Sexual Offenders to Report Vehicle Information Changes to the FDLE’s Online System**

The bill amends ss. 775.21 and 943.0435, F.S., to authorize sexual predators and sexual offenders to report vehicle information changes to the FDLE’s online system. Currently, this

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<sup>34</sup> E-mail to staff of Senate Committee on Criminal Justice from FDLE staff, dated March 3, 2021 (on file with the Senate Rules Committee).

<sup>35</sup> *Id.*

information is reported to sheriff's offices, so the addition of another reporting mechanism will reduce the impact on sheriff's offices to process this information.<sup>36</sup>

### **Authorizing Sexual Predators and Sexual Offenders to Report Specified Registration Information through a DHSMV-Authorized Alternate Method**

The bill amends ss. 775.21 and 943.0435, F.S., to authorize sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV. Currently, this information is reported at a driver license office each time a sexual predator's or sexual offender's driver license or identification card is subject to renewal, and within 48 hours after any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process.<sup>37</sup>

### **Clarifying a Registration Requirement Relating to the Timing of Reporting of a Change of Residence to Another State or Jurisdiction or International Travel**

The bill amends ss. 775.21 and 943.0435, F.S., to clarify a registration requirement relating to the timing of reporting of a change of residence to another state or international travel. The bill specifies that the registrant must report in person to the sheriff of the county of current residence *at least* 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel outside of the United States. Any travel that is not known by a registrant *at least 48 hours before he or she intends to establish a residence in another state or jurisdiction* or 21 days before the departure date *for travel outside of the United States* must be reported to the sheriff's office as soon as possible before departure.

Currently, the registrant must report in person to the sheriff of the county of current residence *within* 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel *if the intended residence of 5 days or more* is outside of the United States. Any travel that is not known by a registrant 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure.<sup>38</sup>

The bill also specifies that the FDLE must report intended travel to law enforcement in the destination jurisdiction. Currently, the law only requires the FDLE to report intended residence to such law enforcement.<sup>39</sup>

### **Specifying that Failure to Report Intended Travel is Punishable as Provided**

The bill amends ss. 775.21 and 943.0435, F.S., to specify that failure to report intended travel is punishable as a third degree felony. Currently, such failure would be covered under language that

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<sup>36</sup> See "Present Situation" section of this analysis.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

punishes a sexual predator or sexual offender who doesn't comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.<sup>40</sup>

### **Creating a Process for Removing Registration Requirements for Certain Sexual Offenders with Out-of-State Convictions**

The bill amends s. 943.0435, F.S., to create a process for a person to petition for relief from registration if the person's requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only. To qualify for removal, a sexual offender who qualifies to petition for relief must not only establish their designation has been removed (as described below) but also satisfy the registration removal requirements set forth in s. 943.0435(11)(a), F.S.<sup>41</sup>

As previously noted, the FDLE has indicated concerns about the application of these criteria to such person. "As Florida does not have a non-public registry, such an individual's registration information would be publicly available. From an equal protection standpoint, these circumstances may be found objectionable by the courts as the current laws treat similarly situated persons convicted in Florida differently than those convicted in other states. Not correcting this issue increases the risk that a court's decision could impact the entire registry."<sup>42</sup>

The person previously described must file a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in Florida. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction requiring registration, provided that such person does not meet the criteria for registration as a sexual offender under Florida law. If the person meets the criteria previously described, the court may grant the petition and remove the requirement to register as a sexual offender.

The petition must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If the confidential status was not granted by court order, the person must demonstrate to the court that his or her registration requirement has been made confidential by operation of law in the state or jurisdiction requiring registration. The state attorney and the FDLE must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

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<sup>40</sup> See ss. 775.21(10) and 943.0435(9)(a), F.S.

<sup>41</sup> These requirements include being lawfully released as described in s. 943.0435(11)(a)1., F.S., for at least 25 years and no arrest for a sexual offense specified in that subparagraph.

<sup>42</sup> *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

If a person provides to the FDLE a certified copy of the circuit court's order granting the person's removal of the requirement to register as a sexual offender in Florida in accordance with the requirements previously described, the registration requirement does not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the State Constitution.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

The bill will apply retroactively to any sexual offenders who meet the new definition included in the bill. Courts have generally found that sexual offender and predator registration laws are non-punitive civil actions that do not violate the *ex post facto* clause.<sup>43</sup> However, in a situation such as the previously referenced defendant in *State v. James*, a defendant who previously did not meet the definition of a sexual offender cannot be convicted for failure to register unless the defendant knew of the obligation to register.<sup>44</sup>

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

None.

<sup>43</sup> *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

<sup>44</sup> *State v. Giorgetti*, 868 So. 2d 512, 520 (Fla. 2004) (Finding that Florida sexual offender registration statutes include a requirement that the alleged offender must know of the obligation to register and maintain current addresses.)

**C. Government Sector Impact:**

According to the FDLE, the bill should not have a fiscal impact on the department.<sup>45</sup> Although the bill authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV, it does not require the DHSMV to create this alternate method.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill reenacts the following sections of the Florida Statutes: 61.13, 68.07, 98.0751, 320.02, 322.141, 322.19, 394.9125, 397.487, 435.07, 775.0862, 775.13, 775.21, 775.24, 775.25, 775.261, 794.056, 900.05, 903.046, 903.133, 907.043, 921.0022, 938.085, 938.10, 943.0435, 943.0436, 943.0584, 944.606, 944.607, 944.609, 948.06, 948.063, 948.31, 985.04, 985.481, 985.4815, 1012.467.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Rules on March 4, 2021:**

The Committee Substitute:

- Provides legislative findings and intent regarding the construction of a provision in the definition of the term “sexual offender” relating to the release from sanction. The amendment clarifies this provision to provide consistency with the legislative findings and intent.
- Specifies that a person meeting the criteria to petition for removal of sexual offender registration requirements under a process created by the bill must also satisfy registration-removal requirements in current law.
- Changes the effective date from October 1, 2021, to effective upon becoming law.

**CS by Criminal Justice on January 26, 2021:**

The Committee Substitute:

- Substantially rewords a provision that clarifies release from conviction sanctions for sexual offender reporting and registration purposes so that an offender with an

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<sup>45</sup> See *supra* note 41.

outstanding financial obligation is required to report and register as a sexual offender for a qualifying offense.

- Amends the definitions of “permanent residence,” “temporary residence,” and “transient residence” to clarify how days are calculated for purposes of those definitions.
- Authorizes sexual predators and sexual offenders to report vehicle information changes to the FDLE’s online system.
- Authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV.
- Clarifies a registration requirement relating to the timing of reporting of a change of residence to another state or jurisdiction or international travel.
- Specifies that failure to report intended travel is punishable as provided.
- Creates a process for a person to petition for relief from registration if the person’s requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.

**B. Amendments:**

None.