

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1235 Sexual Predators and Sexual Offenders
SPONSOR(S): Judiciary Committee and Criminal Justice Subcommittee, Baker and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1230

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1235 passed the House on February 28, 2024, and subsequently passed the Senate on March 1, 2024.

The bill makes several changes to ss. 775.21 and 943.0435, F.S., relating to the registration requirements for sexual predators and sexual offenders and penalties for noncompliance, including by:

- Amending s. 775.21(2), F.S., to clarify the definitions of "conviction," "permanent residence," "temporary residence," and "transient residence."
- Amending ss. 775.21(6)(a)1.d. and 943.0435(2)(b)3., F.S., to authorize a sexual predator or sexual offender to use the Florida Department of Law Enforcement's (FDLE) online reporting system to report any changes to vehicles owned.
- Amending ss. 775.21(6)(g)2.b. and 943.0435(4)(b)2., F.S., to require a sheriff to electronically submit to FDLE the addresses and locations where a sexual predator or sexual offender maintains a transient residence within two business days after a sexual predator or sexual offender provides such information to the sheriff's office.
- Amending ss. 775.21(6)(i) and 943.0435(7), F.S., to require a sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida to report such an intention *at least*, rather than within, 48 hours before the date he or she intends to leave the state, and to report to the sheriff's office as soon as possible before departure any travel that is not known by the sexual predator or sexual offender 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 the United States.
- Amending s. 775.21(10)(a), F.S., to specify that a sexual predator who fails to respond to any address verification correspondence from a county or local law enforcement agency within a specified time period commits a third degree felony and that each instance of a sexual predator's failure to register or report changes to the required registration information constitutes a separate offense.
- Amending s. 943.0435, F.S., to require, if a sexual offender is in the custody of a local jail, the custodian of the local jail to register the sexual offender within three business days after his or her intake and upon his or her release and forward such registration to FDLE, to take a digitized photograph of the sexual offender while he or she is in custody and forward such photograph to FDLE, and to notify FDLE if the sexual offender escapes from custody or dies.
- Amending s. 943.0435(9)(a), F.S., relating to a sexual offender's noncompliance with registration and reporting requirements, to mirror the language in s. 775.21(10), F.S., for a sexual predator, and providing that each instance of a sexual offender's failure to register or report changes to the required registration information constitutes a separate offense.
- Amending s. 943.0435(11), F.S., to require that FDLE receive notice of a petition for removal of sexual offender registration requirements three weeks prior to a hearing and to authorize FDLE to present evidence in opposition to such a petition.

According to FDLE, the bill may have a positive fiscal impact on state government expenditures by requiring FDLE to update sexual predator and sexual offender registration forms, the Florida sexual predator and sexual offender website and other criminal justice websites, and training materials. However, FDLE estimates such updates can be absorbed within existing resources. The bill may have a positive fiscal impact on local government expenditures by requiring local law enforcement agencies to update sexual predator and sexual offender documentation, policies and procedures, and training manuals.

The bill was approved by the Governor on April 10, 2024, ch. 2024-73, L.O.F., and will become effective on October 1, 2024.

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

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DATE: 4/11/2024

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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:
 - 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 offender³⁹ must register:

- With DOC if the sexual offender is under the supervision of DOC but not incarcerated within three business days after being sentenced for a qualifying offense.⁴⁰
- In person at his or her local sheriff's office 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.⁴¹

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;⁴²
 - 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;⁴³
- 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;⁴⁴
- 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;⁴⁵ or
 - The sexual predator was designated a sexual predator within 48 hours after such finding is made.⁴⁶

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 A juvenile sexual offender who is under the care or custody of the Department of Juvenile Justice is subject to separate registration requirements under s. 985.4815, F.S.

⁴⁰ S. 944.607(4), F.S.

⁴¹ S. 943.0435(2)(a)1., F.S.

⁴² S. 775.21(6)(b), F.S.

⁴³ *Id.*

⁴⁴ S. 775.21(6)(c), F.S.

⁴⁵ S. 775.21(6)(e)a., F.S.

⁴⁶ S. 775.21(6)(2)b., F.S.

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;
- Provide his or her permanent, temporary, or transient residence; and
- Submit to a photograph.⁴⁷

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;
- Address of any current temporary residence;
- Address, location, or description of any transient residence, 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.⁴⁸

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;⁴⁹

⁴⁷ S. 775.21(6)(f)1., F.S.

⁴⁸ Ss. 775.21(6)(a) and 943.0435(2)(b), F.S.

⁴⁹ S. 943.0435(14), F.S.

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

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; and
 - Change to vehicles owned.⁵²
- 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.⁵³

A sexual offender or sexual predator must report in person to the sheriff of the county of his or her residence at least 21 days before the date he or she intends to travel outside the United States for more than five days.⁵⁴

Residence Definitions

For purposes of sexual offender or sexual predator residence reporting requirements, the term:

- "Permanent residence" means a place where the person abides, lodges, or resides for three or more consecutive days.⁵⁵
- "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 three 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.⁵⁶
- "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 has no specific street address.⁵⁷

The definitions of "permanent residence," "temporary residence," and "transient residence," all require a person to spend a certain amount of "days" at a location for the definition to apply. However, s. 775.21, F.S., does not specify how "a day" is calculated.

Verification

County and local law enforcement agencies, in conjunction with FDLE, are responsible for verifying the addresses of sexual predators and sexual offenders who are not under the care, custody, or control of

⁵⁰ Ss. 775.21(8)(a) and 943.0435(14), F.S.

⁵¹ Ss. 775.21(6)(g)2.a. and 943.0435(4)(b)2., F.S.

⁵² Ss. 775.21(6)(i) and 943.0435(4)(e), F.S.

⁵³ *Id.*

⁵⁴ Ss. 775.21(6)(i) and 943.0435(7), F.S.

⁵⁵ Ss. 775.21(2)(k), F.S.

⁵⁶ S. 775.21(2)(n), F.S.

⁵⁷ S. 775.21(2)(o), F.S.

DOC.⁵⁸ DOC is responsible for verifying the addresses of sexual predators who are not incarcerated but who reside in the community under DOC supervision.⁵⁹

Penalty for Noncompliance with Registration Requirements

Generally, failing to comply with registration requirements is a third degree felony,⁶⁰ punishable by up to five years in prison and a \$5,000 fine.⁶¹

Removal from Sexual Predator or Sexual Offender Registration Requirements

A sexual predator must maintain registration with FDLE for the duration of his or her life, unless he or she receives a full pardon or has had a conviction set aside in a postconviction proceeding.⁶² A sexual offender is required to maintain registration with FDLE for the duration of his or her life unless he or she receives a full pardon, has had a conviction set aside in a postconviction proceeding, or has her or her requirement to register removed by a court. A court may consider removing a sexual offender's registration requirements if the sexual offender's requirement to register was *not* based on an adult conviction for specified offenses⁶³ and the sexual offender:

- Has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years; and
- Has not been arrested for committing any felony or misdemeanor offense since his or her release.⁶⁴

The state attorney in the circuit in which the petition for relief is filed must be given notice of such petition at least three weeks prior to a hearing on the matter and may present evidence in opposition to the requested relief.⁶⁵

Effect of the Bill

The bill amends several provisions in ss. 775.21 and s. 943.0435, F.S., relating to sexual predator and sexual offender registration and reporting requirements.

Definitions

The bill amends s. 775.21(2), F.S., to clarify how "a day" is calculated for purposes of defining a "permanent residence," temporary residence," or "transient residence," by specifying that the first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. The bill provides a day includes any part of a calendar day.

The bill also requires that a person must use a place for the purpose of abiding, lodging, or residing to qualify as a "transient residence."

⁵⁸ Ss. 775.21(8) and 943.0435(6), F.S.

⁵⁹ S. 775.21(8), F.S.

⁶⁰ Ss. 775.082, 775.083, or 775.084, F.S.

⁶¹ 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, 775.083, or 775.084, F.S.).

⁶² S. 775.21(2)(k), F.S.

⁶³ Such specified offenses include: kidnapping offenses under ss. 787.01 or 787.02; sexual battery under s. 794.011, F.S., excluding s. 794.011(10); lewd or lascivious offenses under ss. 800.04(4)(a)2., (5)(b), or (5)(c)2., F.S., and 825.1025, F.S.; any violation of a similar law in another jurisdiction; or any attempt or conspiracy to commit such offenses.

⁶⁴ S. 943.0435(11), F.S.

⁶⁵ S. 9430435(11)(a)3., F.S.

Registration Requirements for Sexual Offenders and Sexual Predators

The bill makes several changes related to the registration requirements for sexual predators and sexual offenders and penalties for noncompliance, including by:

- Amending ss. 775.21(6)(a)1.d. and 943.0435(2)(b)3., F.S., to authorize a sexual predator or sexual offender to use FDLE's online reporting system to report any changes to vehicles owned.
- Amending ss. 775.21(6)(g)2.b. and 943.0435(4)(b)2., F.S., to require a sheriff's office to electronically submit to FDLE the addresses and locations where a sexual predator or sexual offender maintains a transient residence within two business days after a sexual predator or sexual offender provides such information to the sheriff's office.
- Amending ss. 775.21(6)(i) and 943.0435(7), F.S., to require a sexual predator or sexual offender:
 - Who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida to report such an intention *at least*, rather than within, 48 hours before the date he or she intends to leave the state.
 - To report to the sheriff's office as soon as possible before departure any travel that is not known by the sexual predator or sexual offender 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 the United States.
- Amending s. 775.21(10)(a), F.S., to specify that:
 - A sexual predator who fails to respond to any address verification correspondence from a county or local law enforcement agency within a specified time period commits a third degree felony.
 - Each instance of a sexual predator's failure to register or report changes to the required registration information constitutes a separate offense.
- Amending s. 943.0435, F.S., to mirror s. 775.21(6)(c), F.S., relating to sexual predators, to require, if a sexual offender is in the custody of a local jail, the custodian of the local jail to:
 - Register the sexual offender within three business days after his or her intake and upon his or her release and to forward such registration to FDLE.
 - Take a digitized photograph of the sexual offender while he or she is in custody and forward such photograph to FDLE.
 - Notify FDLE if the sexual offender escapes from custody or dies.
- Amending s. 943.0435(9)(a), F.S., relating to a sexual offender's noncompliance with registration and reporting requirements, to:
 - Mirror the language in s. 775.21(10), F.S., for a sexual predator, by making it a third degree felony for a sexual offender to fail to register or, after such initial registration, to knowingly provide false registration information by act or omission or otherwise fail to comply with the requirements of s. 943.0435, F.S., or to fail to:
 - Maintain, acquire, or renew a driver license or ID card;
 - Provide required location information;
 - Provide change-of-name information;
 - Provide electronic mail addresses, internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
 - Provide all home telephone numbers and cellular telephone numbers;
 - Report any changes to employment information;
 - Report changes in status at an institution of higher education;
 - Report any changes to vehicles owned, including the addition of new vehicles and changes to the make, model, color, vehicle identification number (VIN), and license tag numbers of previously reported vehicles;
 - Make a required report in connection with vacating a permanent residence;
 - Reregister as required;
 - Respond to any address verification correspondence from FDLE or from county or local law enforcement agencies within three weeks after the date of the correspondence;

- Provide that each instance of a sexual offender's failure to register or report changes to the required registration information constitutes a separate offense.
- Amending s. 943.0435(11), F.S., to:
 - Require that FDLE receive notice of a petition for removal of sexual offender registration requirements three weeks prior to a hearing and to authorize FDLE to present evidence in opposition to such a petition; and
 - Specify that, for a sexual offender who seeks removal of his or her requirement to register as a sexual offender because such a requirement has been removed by a court in another jurisdiction or by operation of law in another jurisdiction, the sexual offender must establish the requisite criteria to be considered for removal and establish that he or she does not meet any other criteria for registration as sexual offender under s. 943.0435(1)(h)1., F.S.

The bill makes other non-substantive technical changes throughout ss. 775.21 and 943.0435, F.S., to improve clarity and align statutory language.

For the purpose of incorporating the amendments made by the bill, the bill reenacts ss. 320.02, 775.25, 938.10, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

The effective date of the bill is October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to FDLE, the bill may have a positive fiscal impact on state government expenditures by requiring FDLE to update sexual predator and sexual offender registration forms, the Florida sexual predator and sexual offender website and other criminal justice websites, and training materials. However, FDLE estimates such updates can be absorbed within existing resources.⁶⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to FDLE, the bill may have a positive fiscal impact on local government expenditures by requiring local law enforcement agencies to update sexual offender and sexual predator documentation, policies and procedures, and training manuals.⁶⁷

⁶⁶ Florida Department of Law Enforcement, Agency Analysis of HB 1235, p. 4 (Jan. 5, 2024) (on file with the House Criminal Justice Subcommittee).

⁶⁷ *Id.* at p. 3.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.