

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1333 Sexual Offenders  
**SPONSOR(S):** Baxley  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Cox	White
2) Justice Appropriations Subcommittee		Smith	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual predators and offenders to bring them further in line with the federal Adam Walsh Act.

Specifically, the bill removes language that currently prevents a parent or guardian convicted of specified offenses of kidnapping, false imprisonment, or luring or enticing a child against his or her minor child from being designated as a sexual predator or sexual offender. Under the bill, such a parent or guardian may be designated a sexual predator or offender if he or she commits one of the above-mentioned specified offenses and the offense had a sexual component.

The bill also:

- Amends various definitions and provides consistency among relevant statutes;
- Expands the types of information that can be registered or updated through FDLE's online system;
- Clarifies the appropriate entity to which a sexual predator or offender must report;
- Modifies reporting requirements for international travel;
- Requires offenders taking online courses to report such information and for institutions of higher education to be notified of such attendance;
- Clarifies obligations to obtain a driver license or identification card;
- Removes inoperable language that was inadvertently left in s. 943.0435, F.S.;
- Clarifies to which court an offender must petition for removal from registration requirements; and
- Clarifies that the "Romeo and Juliet" exception that allows removal from registration requirements applies only to consensual acts.

Additionally, the bill requires offenders designated as a sexual offender for convictions of lewd or lascivious battery upon an elderly person to report quarterly and for life and prohibit such offenders from being eligible for removal from registration requirements.

The bill will likely have an indeterminate prison bed impact to DOC.

The bill will have an indeterminate fiscal impact to expenditures in local governments.

The bill is effective on October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Predator and Sexual Offender Qualifying Offenses**

###### *Sexual Predator Qualifying Offenses*

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

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>1</sup>
  - Section 794.011, F.S. (sexual battery);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>2</sup>
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;<sup>3</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8)(b), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

###### *Sexual Offender Qualifying Offenses*

<sup>1</sup> These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 804 So. 2d 451 (Fla. 4th DCA 2001).

<sup>2</sup> *Id.*

<sup>3</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

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

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian;
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>4</sup> imposed for any conviction of an offense described above.

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

### **Specified Qualifying Offenses Involving a Minor Child and Parent or Guardian**

#### *Sexual Predator and Sexual Offender Qualifying Offenses*

There are specified offenses included in the enumerated list of qualifying offenses that cannot be used as a basis for a designation as a sexual predator or offender if the defendant is the parent or guardian or the minor victim, including:

- Capital, life, or first degree felony violations of ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment); or
- Felony violations of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child).<sup>5</sup>

As noted above, a conviction for one of the above-mentioned offenses will not result in a person being designated as a sexual predator or sexual offender if the conviction is found to lack a sexual

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<sup>4</sup> 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. s. 943.0435(1)(a), F.S.

<sup>5</sup> ss. 775.21(4) and 943.0435(1), F.S.

component, regardless of whether that person is the victim's parent or guardian.<sup>6</sup> Florida Department of Law Enforcement (FDLE) reports that they currently review all convictions of kidnapping, false imprisonment, and luring or enticing a child, where the victim is a minor and the defendant is not the parent or guardian, to ensure that there is a sexual intent or motivation to the conviction prior to using such conviction as a basis for a sexual predator or sexual offender designation.<sup>7</sup>

#### *Loitering and Prowling by a Person Convicted of a Sexual Offense*

Section 856.022, F.S., prohibits a person convicted of specified sexual offenses<sup>8</sup> from being within 300 feet of a place where children are congregating. A person commits the offense of loitering or prowling<sup>9</sup> by a person convicted of a sexual offense, which is a first degree misdemeanor,<sup>10</sup> if he or she:

- Knowingly contacts, etc. a child under 18 years of age in any public park with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature;<sup>11</sup> or
- Knowingly is present in any child care facility or school containing any students or on real property comprising any child care facility or school containing any students when the child care facility or school is in operation and he or she:<sup>12</sup>
  - Fails to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or
  - Fails to remain under direct supervision of a school official<sup>13</sup> or designated chaperone when present in the vicinity of children.

This section does not apply to a person who has been removed from the requirement to register.<sup>14</sup>

Sexual offenses specified in this section, in part include, convictions of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian.

#### Effect of the Bill

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<sup>6</sup> See *supra* note 1.

<sup>7</sup> Email from Ron Draa, Legislative Affairs Director, Florida Department of Law Enforcement (FDLE), HB 1333, January 20, 2016.

<sup>8</sup> s. 856.022(1), F.S.

<sup>9</sup> Section 856.021, F.S., provides it is a second degree misdemeanor for a person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. The section further provides that circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>10</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>11</sup> Section 856.022(4)(a), F.S., further provides that this provision applies only to a person who has committed an offense enumerated in the statute whose offense was committed on or after May 26, 2010. "Contacting" for this statute includes approaching or communicating with a child. "Public park" includes buildings or playgrounds in a public park, or on real property comprising of any public park.

<sup>12</sup> ss. 856.022(4)(b)1., F.S. This provision provides a student includes children in prekindergarten through grade 12. A person cannot be convicted of the offense of this specified offense of loitering or prowling if the person had previously provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner.

<sup>13</sup> Section 856.022(4)(b), F.S., defines the term "school official" to mean a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

<sup>14</sup> s. 856.022, F.S.

The bill amends ss. 775.21, 856.022, 943.0435, 944.606, and 944.607, F.S., to remove language associated with the above-mentioned specified offenses that prevents a parent or guardian who committed such a specified qualifying offense against his or her minor child for a sexual purpose from being designated as a sexual predator or offender. Therefore, if a parent or guardian is convicted for kidnapping, false imprisonment, or luring or enticing a child against his or her minor child and such offense had a sexual component, this will result in the parent or guardian being designated as a sexual predator or sexual offender.

Additionally, the bill removes this language from any references to the applicable qualifying offenses found within the above-mentioned statutes to conform references to the new definition of the qualifying offenses.

The removal of this language expands the instances that can result in a person being designated a sexual predator or sexual offender and, thus, subject to registration requirements.

FDLE reports it they will be expanding its review process of these specified convictions to include cases where the defendant is the parent or guardian of the minor victim ensuring that each conviction used for a sexual predator or offender designation includes a sexual component.<sup>15</sup>

The bill also amends s. 856.022, F.S., relating to loitering or prowling by a person convicted of a sexual offense, to remove the above-mentioned language from the enumerated list of offenses.

### **Juvenile Sexual Offenders**

Section 943.0435, F.S., provides, in part, that a juvenile, 14 years old or older, who is adjudicated delinquent for specified enumerated offenses, on or after July 1, 2007, is designated as a “sexual offender.”<sup>16</sup> A juvenile designated as a sexual offender under this provision is required to register in the same manner as an adult designated as a sexual offender. The offenses that qualify a juvenile as a sexual offender include:

- Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S. (lewd or lascivious battery by specified sexual activity)<sup>17</sup> where the:
  - Victim is under 12 years of age; or
  - Court finds sexual activity by the use of force or coercion;
- Section 800.04(5)(c)1., F.S. (specified act of lewd or lascivious molestation)<sup>18</sup> where the:
  - Defendant is less than 18 years of age;
  - Victim less than 12 years of age; and
  - Court finds molestation involved unclothed genitals; or
- Section 800.04(5)(d), F.S. (specified act of lewd or lascivious molestation) where the:
  - Defendant is less than 18 years of age;
  - Victim is 12 years of age or older but less than 16 years; and
  - Court finds the use of force or coercion and unclothed genitals.

### **Effect of the Bill**

The bill clarifies that a juvenile offender has committed a qualifying offense requiring a designation as a sexual offender if he or she is adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, an offense in Florida which is similar to one of the above-mentioned statutes and which was redesignated from a former statute number.

The bill amends s. 943.0515, F.S., to conform the section to these changes made by the act.

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<sup>15</sup> *Id.*

<sup>16</sup> ss. 943.0435(1)(a)1.d., F.S. Additionally, this section requires the court to make a written finding of the age of a juvenile at the time of the offense.

<sup>17</sup> Section 800.04(4)(a)2., F.S., prohibits a person from committing a lewd or lascivious battery by encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity

<sup>18</sup> Section 800.04(5)(a), F.S., defines a lewd and lascivious molestation to mean a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator.

## **Sexual Predator and Sexual Offender Registration - Generally**

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>19</sup> A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>20</sup> Failure to comply with these requirements is generally a third degree felony.<sup>21</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>22</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including, in part, his or her name, address, e-mail address, home and cellular telephone number, and internet identifier, to the sheriff's department, which then provides the information to the FDLE for inclusion in the statewide database.<sup>23</sup> A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>24</sup>

## **Online System for Registration and Re-Registration**

Sections 775.21 and 943.0435, F.S., require FDLE to establish an online system through which sexual predators and offenders may securely access and update all electronic mail addresses (e-mail) and Internet identifier information.

### Effect of the Bill

The bill amends ss. 775.21 and 943.0435, F.S., to expand the information that can be registered or updated due to changes through FDLE's online system, including changes:

- To home telephone numbers and cellular telephone numbers, including added and deleted numbers;
- To employment information; or
- In status related to enrollment, volunteering, or employment at institutions of higher education.

Additionally, the bill provides that sexual predators or offenders may continue to register such changes in person. If a sexual predator or offender chooses to register information changes in person, he or she must ensure that the changes are registered with the appropriate entity.<sup>25</sup> The bill further provides that changes in information registered in person or through the online system must be done within 48 hours of the change.

The bill also amends ss. 775.21 and 943.0435, F.S., to provide that FDLE's online system must permit sexual predators or offenders to securely access, submit, and update all home telephone numbers and cellular telephone numbers, employment information, and institution of higher education information.

## **Registration - Reporting Frequency**

As noted above, sexual predators and offenders have to re-register at varying intervals dependent upon the type of designation and the qualifying offense that was the basis for the designation as a sexual predator or offender. Sexual predators and specified sexual offenders must report in person each year during the month of the sexual predator's or offender's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to re-

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<sup>19</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> ss. 775.21(10) and 943.0435(14), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>22</sup> See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>23</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Applicable entities include the sheriff's office; in person at the Department of Corrections (DOC) if in the custody or control, or under the supervision of DOC; or in person at the Department of Juvenile Justice (DJJ) if in the custody or control, or under the supervision of DJJ.

register.<sup>26</sup> The specified sexual offenders who must register quarterly include those whose qualifying offense was one of the following:

- Section 787.01 or s. 787.02, F.S., where the victim is a minor and the offender is not the victim's parent or guardian;
- Section 794.011, F.S., excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- Section 800.04(5)(b), F.S.;
- Section 800.04(5)(c)1., F.S., where the court finds molestation involving unclothed genitals or genital area;
- Section 800.04(5)(c)2., F.S., where the court finds molestation involving the use of force or coercion and unclothed genitals or genital area;
- Section 800.04(5)(d), F.S., where the court finds the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit such offense;
- A violation of a similar law of another jurisdiction; or
- A violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph.<sup>27</sup>

Sexual offenders whose designation is the result of a non-enumerated qualifying offense must report each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month.<sup>28</sup> Reporting must be done in person to the sheriff's office in the county in which he or she resides or is otherwise located.<sup>29</sup>

#### Effect of the Bill

The bill amends ss. 943.0435 and 944.607, F.S., to provide that a sexual offender who is required to register as a result of a conviction for s. 825.1025(2)(a), F.S., must re-register quarterly, for life. This change will bring the statute in line with the federal Adam Walsh Act.

#### **Registration – Electronic Mail Addresses and Internet Identifiers**

Sexual predators and offenders are required to register all electronic mail (e-mail) address<sup>30</sup> or internet identifiers<sup>31</sup> with FDLE before such addresses or identifiers can be used.<sup>32</sup> Registration must be made either in person or through FDLE's online system.<sup>33</sup>

#### Effect of the Bill

The bill amends s. 775.21, F.S., to modify the term "Internet identifier" to mean that it:

"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

<sup>26</sup> ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

<sup>27</sup> ss. 943.0435(14)(b) and 944.607(13)(b), F.S.

<sup>28</sup> s. 943.0435(14)(a) and 944.607(13)(a), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Sections 775.21(1)(g) and 943.0435(1)(f), F.S., define "electronic mail address" as having the same meaning as provided in s. 668.602, F.S., which defines the term "electronic mail address" to mean a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

<sup>31</sup> Section 775.21(2)(i), F.S., defines "internet identifier" to mean 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). Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

<sup>32</sup> ss. 775.21(6)(a)1., (6)(e)2., and (6)(g)5. and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

<sup>33</sup> ss. 775.21(6)(g)5. and 943.0435(4)(e), F.S.

does not include a date of birth, Social Security number, or personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.”

This new language expands the definition of Internet identifier to include the corresponding website URLs or application software that is associated with the identifier, rather than limiting the information that must be registered to the names used for Internet communication. The bill amends the definition of “Internet identifier” found in ss. 943.0435, 944.606, 944.607, and 985.4815, F.S., to have the same meaning as in s. 775.21, F.S.

The bill adds the term “electronic mail address” to ss. 985.481 and 985.4815, F.S., and provides that the term has the same meaning as in s. 668.602, F.S.

For the above-mentioned information related to email addresses and Internet identifiers that are required to be registered prior to use, the bill amends ss. 775.21 and 943.0435, F.S., to provide that a sexual predator or offender may register such information through FDLE’s online system or in person at the sheriff’s office. Additionally, the bill amends these sections to provide that sexual predators or offenders who are in the custody or control, or under the supervision, of the Department of Corrections (DOC) or Department of Juvenile Justice (DJJ) must report all email addresses and Internet identifiers to the applicable agency prior to using such email addresses or Internet identifiers.

### **Registration – Location of Residence or Travel**

Sexual predators and offenders are required to register their permanent,<sup>34</sup> temporary,<sup>35</sup> or transient<sup>36</sup> residences both within the state and outside the state in the above-mentioned manner.<sup>37</sup> A sexual predator or 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 Florida to establish residence in another state or jurisdiction; or
- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.<sup>38</sup>

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.<sup>39</sup> The sheriff must promptly provide FDLE the information received from the sexual predator or offender and 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 offender’s intended residence.<sup>40</sup>

### **Effect of the Bill**

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<sup>34</sup> Section 775.21(1)(k), F.S., defines “permanent residence” to mean a place where the person abides, lodges, or resides for 5 or more consecutive days. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>35</sup> Section 775.21(1)(l), F.S., defines “temporary residence” to mean a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person’s permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>36</sup> Section 775.21(1)(m), F.S., defines “transient residence” to mean a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person’s permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

<sup>37</sup> ss. 775.21(6)(i) and 943.0435(7), F.S.

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

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

<sup>40</sup> *Id.*



The bill amends ss. 775.21 and 943.0435, F.S., to clarify that the sexual predator or offender must report to the sheriff of the county of current residence at least 21 days before the date of intended travel for international travel, rather than within 21 days of the planned departure date. Additionally, the bill requires a sexual predator or offender to 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 for international travel plans.

Additionally, the bill amends the definition sections found in ss. 944.606, 985.481, and 985.4815, F.S., to include definitions for the terms permanent, temporary, and transient residence. The bill provides these terms have the same meaning as provided in s. 775.21, F.S.

### **Registration – Institution of Higher Education**

Sexual predators and offenders that are enrolled, employed, volunteering, or carrying on a vocation at an institution of high education are required to provide the:

- Name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.<sup>41</sup>

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.<sup>42</sup> The appropriate entity is required to promptly notify each institution of the sexual predator's or offender's presence and any change in enrollment, volunteer, or employment status.<sup>43</sup>

The term "institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a "career center, community college, college, state university, or independent postsecondary institution."<sup>44</sup>

The term "change in enrollment or employment status" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the "commencement or termination of enrollment or employment or a change in location of enrollment or employment."<sup>45</sup>

### **Effect of the Bill**

The bill amends s. 775.21, F.S., to rename the term "change in enrollment or employment status" to "change in status at an institution of higher education," and to amend the definition to mean:

the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education.

The bill amends the name of the term in ss. 943.0435, 944.607, and 985.4815, F.S., in the same manner and provides the term has the same meaning as provided in s. 775.21, F.S.

Therefore, sexual predators or sexual offenders who are enrolled in online classes at institutions that meet the above-mentioned definition will now be required to register such information and re-register changes to such status. Additionally, appropriate reporting entities will be required to notify institutions of sexual predators or offenders that are enrolled in online classes through their institution.

<sup>41</sup> ss. 775.21(6)(b), 943.0435(2)(b)2., 944.607(4)(b), and 985.4815(4)(b), F.S.

<sup>42</sup> Section 775.21(6)(b), F.S., provides that the sheriff or DOC are the appropriate reporting entities. Section 943.0435(2)(b)2., F.S., provides the sheriff is the appropriate reporting entity. Section 944.607(4)(b), provides DOC is the appropriate reporting agency. Section 985.4815(4)(b), F.S., provides that DJJ is the appropriate reporting agency.

<sup>43</sup> *Id.*

<sup>44</sup> ss. 775.21(1)(j), 943.0435(1)(d), 944.607(1)(d), and 985.4815(1)(c), F.S.

<sup>45</sup> ss. 775.21(1)(a), 943.0435(1)(e), 944.607(1)(e), and 985.4815(1)(a), F.S.

The bill retains the reporting agencies included in ss. 944.607 and 985.4815, F.S., but amends ss. 775.21 and 943.0435, F.S., to provide that the sheriff, DOC, or DJJ shall promptly notify each institution of higher education of a sexual predator's or offender's presence or change in status.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, to specifically include information regarding changes in enrollment status to the types of information that a sexual predator or offender must register and re-register.

### **Registration – Professional Licenses and Employment Information**

Sexual predators and offenders are required to provide information about employment and any professional licenses he or she may possess.<sup>46</sup> Currently, the law is silent as to the definition of a “professional license.”

#### Effect of the Bill

The bill amends s. 775.21, F.S., defining the term “professional license” to mean the “document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business.”

The bill amends ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to include the term “professional license” and defines the term to have the same meaning as in s. 775.21, F.S.

Therefore, any sexual predator or offender, including a juvenile sexual predator, who has been or is issued a license that meets the above criteria will be required to provide information about such license at the time of registration.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include employment information and changes in employment information to the types of information that a sexual predator or offender must register and re-register.

### **Registration – Driver License or Identification Card**

Sexual predators and sexual offenders who are not incarcerated are required to register in person at a driver license office within 48 hours to obtain a driver license or identification card.<sup>47</sup> Additionally, a sexual predator or offender is required to report specified information to Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the sexual predator's or offender's:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.<sup>48</sup>

DHSMV must forward to FDLE and DOC all photographs and information provided by sexual predators or offenders.<sup>49</sup>

A sexual predator who is unable to secure or update a driver license or identification card with DHSMV as provided as provided above must also report any change of the predator's residence or change in the predator'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 DHSMV.

#### Effect of the Bill

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<sup>46</sup> ss. 775.21(6)(a)1. and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a)1., 985.4815(4)(a) and (13)(b)1., F.S.

<sup>47</sup> ss. 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of DOC.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

The bill amends s. 775.21, F.S., to clarify that a sexual predator who has previously obtained a driver license or identification card as a requirement under s. 944.607, F.S., is not required to obtain a driver license or identification card again.

This bill also amends ss. 775.21 and 943.0435, F.S., to clarify that a sexual predator's or offender's requirement to report specified information to DHSMV does not negate the requirement to obtain a Florida driver license or identification card.

### **Penalties for Failure to Register**

Section 775.21(10), F.S., and ss. 943.0435(14), 944.607(4), and 985.4815(13), F.S., in part, provide that a sexual predator or offender that fails to register, or who fails after registration to update or maintain specified information, commits a third degree felony.

### **Effect of the Bill**

As noted above, the bill expands various current registration and re-registration requirements or adds new registration requirements above what is currently imposed on a sexual predator or sexual offender. If a sexual predator or offender fails to provide initially or update as necessary any of the above-mentioned types of information, he or she will be subject to the criminal penalties for failure to comply with registration requirements.

### **Removal of the Requirement to Register as a Sexual Offender**

Generally, sexual offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>50</sup> However, there are ways in which the registration requirement can be removed.

#### ***Section 943.0435(11), F.S.***

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

- A violation of ss. 787.01 or 787.02, F.S.;
- A violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- A violation of s. 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- A violation of s. 800.04(5)(b), F.S.;
- A violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit any such offense; or
- A violation of similar law of another jurisdiction.<sup>51</sup>

A sexual offender may petition the criminal division of the circuit court of the circuit where the conviction or adjudication occurred.

### **Effect of the Bill**

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<sup>50</sup> ss. 775.21(6) and 943.0435(11), F.S.

<sup>51</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. s. 943.0435(11)(a), F.S.

The bill amends s. 943.0435, F.S., to include a violation of s. 825.1025(2)(a), F.S. (lewd or lascivious battery upon an elderly or disabled person) as an offense that, if committed as an adult, will prohibit a sexual offender from petitioning the court for removal from registration. This will result in such an offender being required register for the offender's lifetime. This change will bring the statute in line with the federal Adam Walsh Act.

The bill also amends s. 943.0435, F.S., to clarify that an eligible sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit where the:

- Conviction or adjudication occurred, for a conviction in this state;
- Sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
- Sexual offender last resided, for a sexual offender with a conviction of a violation of similar law of another jurisdiction who no longer resides in this state.

#### *Section 943.04354, F.S.*

Section 943.04354(1), F.S., provides that a person may be considered for removal from the requirement to register as a sexual predator or offender if the person:

1. Was convicted<sup>52</sup> or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or of a similar offense in another jurisdiction, and the person does not have any other conviction or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or for a similar offense in another jurisdiction;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; or
3. No longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction in which the similar offense occurred; and
4. Is not more than 4 years older than the victim of this violation who was 13 years of age or older, but younger than 18 years of age at the time the person committed this violation.

Subsection (2) of the statute provides that if a person meets the above criteria the person may move the criminal division of the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred to remove the requirement that the person register as a sexual offender or sexual predator. The person must:

- Allege in the motion that he or she meets the criteria in subsection (1) and that removal of the registration requirement will not conflict with federal law; and
- Provide the court with written confirmation that he or she is not required to register in the jurisdiction in which the conviction or adjudication occurred if the offense occurred in a jurisdiction other than Florida.<sup>53</sup>

#### Effect of the Bill

The bill amends s. 943.04354(1), F.S., to remove s. 794.011, F.S. (sexual battery), from the list of eligible offenses that permits a sexual predator or offender to seek for removal from registration requirements under this provision.

The bill clarifies that a person seeking to have his or her registration requirements removed under this section, must file a motion in the criminal division of the circuit court where the:

- Conviction or adjudication for the qualifying offense occurred if registration is required for a conviction that occurred in this state;
- Sexual offender or sexual predator resides if registration is required for a violation of similar law of another jurisdiction; or

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<sup>52</sup> This conviction is regardless of whether the person was adjudicated guilty for the offense.

<sup>53</sup> The state attorney and FDLE must be given notice of the motion at least 21 days before the date of sentencing, disposition of the violation, or hearing on the motion and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. If the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the motion is granted, the person must provide FDLE a certified copy of the order granting relief. If motion is denied, the person is not authorized under this section to file another motion for removal of the registration requirement. s. 943.04354(2), F.S.

- Sexual offender or sexual predator last resided for a sexual offender or predator with a conviction of a violation of a similar law of another jurisdiction who no longer resides in this state.

Lastly, the bill clarifies that for a person to be eligible for removal under this provision, the sexual act must have been consensual, notwithstanding the age of the victim. This clarification ensures that this section is in compliance with the federal Adam Walsh Act.

### **Miscellaneous**

The bill amends s. 943.0435(11), F.S., to remove inoperable language that addresses “registration periods.” FDLE reports this language was associated with a proposed amendment that was not adopted by the Legislature and that a portion of the amendment was inadvertently left in the statute.<sup>54</sup>

The bill amends ss. 92.55, 775.0862, 947.1405, 948.30, 948.31, 1012.315, and 1012.467, F.S., to conform the sections to changes made by the act.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2. Amends s. 856.022, F.S., relating to loitering and prowling by certain offenders in close proximity to children; penalty.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 6. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 7. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 8. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 9. Amends s. 92.55, F.S., relating to judicial or other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals.

Section 10. Amends s. 775.082, F.S., relating to sexual offenses against students by authority figures; reclassification.

Section 11. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 12. Amends s. 947.1405, F.S., relating to conditional release program.

Section 13. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

<sup>54</sup> Florida Department of Law Enforcement, Agency Analysis 2016 HB 1333, p. 2 (January 14, 2016).

Section 14. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 15. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 16. Amends s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 17. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 18. Reenacts s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 19. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 20. Reenacts s. 985.04, F.S., relating to oaths; records; confidential information.

Section 21. Reenacts s. 322.141, F.S., relating to color or markings of certain licenses or identification cards.

Section 22. Reenacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 23. Reenacts s. 948.063, F.S., relating to violations of probation or community control by designated sexual offenders and sexual predators.

Section 24. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 25. Reenacts s. 397.4872, F.S., relating to exemption from disqualification; publication.

Section 26. Reenacts s. 435.07, F.S., relating to exemptions from disqualification.

Section 27. Reenacts s. 775.25, F.S., relating to prosecutions for acts or omissions.

Section 28. Reenacts s. 775.24, F.S., relating to duty of the court to uphold laws governing sexual predators and sexual offenders.

Section 29. Reenacts s. 944.608, F.S., relating to notification to Department of Law Enforcement of information on career offenders.

Section 30. Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

This bill has an indeterminate impact on prison beds.<sup>55</sup> This bill could potentially result in an increase in the prison population; however, available data is insufficient to determine the extent of such an impact.

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<sup>55</sup> Criminal Justice Impact Conference, *HB 1333*, January 29, 2016)  
**STORAGE NAME:** h1333b.JUAS  
**DATE:** 2/5/2016

Per DOC, in FY 14-15, 1 offender was sentenced for s. 825.1025(2)(a), F.S., and that offender received prison (sentence length=48.0 m). There were 558 offenders sentenced under s. 787.01, F.S., s. 787.02, F.S., or s. 787.025(2)(c), F.S., and 265 of these offenders were sentenced to prison (mean sentence length=109.2 m, incarceration rate: 47.5%) It is unknown how many of these offenders were parents and how many offenses had a sexual component.<sup>56</sup>

Per DOC, in FY 14-15, there were 1,145 offenders sentenced for offenses related to sexual offenders and sexual predators, with 620 of these offenders sentenced to prison (mean sentence length=43.4 m, incarceration rate: 54.2%) It is unknown how many additional offenders might be added due to changes made in this bill.)<sup>57</sup>

### **IT Infrastructure**

Implementation would require programming changes to both mSystems and eSystems databases as well as create need for user testing between FDC and FDLE. Offense code changes to the database/table would need to be completed. All changes would need to be added to the current Public Safety Information Act (PSIA), file transfer system currently in place for sex offender information exchange from FDC and FDLE. The cost of implementation is estimated to be \$34,000.<sup>58</sup>

The expenses could be absorbed by existing resources.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

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

##### **2. Expenditures:**

As noted above, the bill expands the reporting requirements of sexual predators or offenders who report in person to sheriff's offices or in specific instances, to the jail. To the extent the expanded reporting requirements results in an increased workload to sheriff or jail employees, the bill may result in increased expenditures to local governments.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### **2. Other:**

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<sup>56</sup> *Id*

<sup>57</sup> *Id*

<sup>58</sup> Department of Corrections, *HB 1333 Legislative Bill Analysis*, January 26, 2016, (On file with the Justice Appropriation Subcommittee).

None.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.