

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 18, 1998 Revised: _____

Subject: Sexual Predator Registration

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for SB 514 would extend the time period that must pass before a sexual predator may petition the court to remove the designation and registration requirements for sexual predators from 10 years to 20 years, if certain criteria is met. The extended time period would apply to offenders designated a sexual predator by a court on or after July 1, 1998.

Procedural requirements are also provided for offenders who petition the court for removal of the sexual predator designation. The procedural requirements are effective on July 1, 1998, and apply to all sexual predators petitioning the court, regardless of when a court designated them a sexual predator.

This CS substantially amends the following section of the Florida Statutes: 775.21.

II. Present Situation:

Florida's Sexual Predator Act

Florida Sexual Predator Act, §775.21, Florida Statutes, provides that an offender should be designated as a "sexual predator" for certain statutorily designated sexual offenses. The sentencing court makes the designation subject to statutory procedures for making a written finding. The sexual predator is required to register directly with the Florida Department of Law Enforcement (FDLE) and provide certain information, such as address and conviction, and be fingerprinted.

In lieu of initially registering with the FDLE, the sexual predator may register with the Department of Corrections (DOC) or any law enforcement agency. The sexual predator is not required to make any further registration as a convicted felony offender in any county.

Each sexual predator who is residing permanently or temporarily in the state outside a correctional facility, jail, or secure treatment facility, must register or be registered within 48 hours after entering the county of permanent or temporary residence. Written notification by the sexual predator must be provided to the FDLE of any change in permanent or temporary residence within 48 hours after arrival at the new place of permanent or temporary residence. FDLE must notify the sheriff, the state attorney, and, if applicable, the police chief of the municipality where the sexual predator resides within 48 hours after the sexual predator registers with FDLE or provides change of location information to the department.

Offenders who were formerly registered as sexual predators, and whose current qualifying offense was committed either on or after October 1, 1993, and before October 1, 1995 (the period from the enactment of the Sexual Predator Act to its amendment in 1995), or for a current offense committed on or after October 1, 1995, and before October 1, 1996 (the period from the 1995 amendment of the law to the 1996 amendment of the law), are no longer designated as sexual predators unless a court makes a written finding that designates them to be sexual predators. So designated, they are subject to the same registration procedures briefly outlined here.

A designated sexual predator must maintain registration with the FDLE for the duration of the offender's life, unless the offender's civil rights are restored, a full pardon has been granted for the qualifying conviction, the conviction has been set aside, or the offender's petition to have his designation removed is granted. A petition may be filed by the sexual predator who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 10 years, and has not been arrested for any felony or misdemeanor offense since release.

The Sexual Predator Act provides that, upon notification of the presence of a sexual predator whose current offense was committed on or after October 1, 1996, the sheriff of the county or the police chief of the municipality where the sexual predator resides, shall notify the community and the public of the "presence" of the sexual predator in a manner deemed appropriate by the sheriff or chief of police. This information must include the sexual predator's name, physical description (including photograph), current address, circumstances of the offense or offenses, and age of the victim of the offense or offenses.

Sexual predators whose current offense precedes the 1996 amendment of the Sexual Predator Act are subject to the notification requirements, if any, under the law at the time this offense was committed. For example, if the current offense was committed during the period when the 1993 law was in force, notification is prohibited because the 1993 law made no provision for such notification. If the current offense was committed on or after the 1995 amendment of the law and prior to the 1996 amendment, the sexual predator is subject to the limited notification requirements of the 1995 law which provided that, subject to a hearing in which the court determines the sexual predator poses a public threat and notice is necessary, the sheriff of the

county, or the chief of police of the municipality where the predator resides, shall notify the public of the “presence” of the sexual predator by publishing notice once a week for two consecutive weeks (two publications being sufficient) in a newspaper of general circulation in the county where the predator resides. The information provided mirrors that which was provided under the 1996 law.

A sexual predator who fails to register or be registered, or who fails, after registration, to provide location information, commits a third-degree felony.

The sexual predator registration list for predators whose current offense was committed on or after October 1, 1996, is a public record which FDLE is authorized to disseminate to the public by any means deemed appropriate. Sexual predator information and a photograph of each designated sexual predator are available on the Internet.

Sexual Battery

Section 794.011, Florida Statutes, sets forth certain offenses constituting criminal sexual battery. Sexual battery is defined as the “oral, anal, or vaginal penetration by or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object”; however, sexual battery does not include an act done for a “bona fide medical purpose.” §794.011(1)(h), Florida Statutes. Depending on the age of the victim and the circumstances or facts involved with perpetrating the sexual battery, the degree of felony committed varies.

If a person who is 18 years of age or older commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age, he commits a capital felony as provided in §794.011(2)(a), Florida Statutes. If a person less than 18 years of age commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age, he commits a life felony as provided in §794.011(2)(b), Florida Statutes.

If a person commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury, he commits a life felony as provided in §794.011(3), Florida Statutes.

Under §794.011(4), Florida Statutes, if a person commits sexual battery upon a person 12 years of age or older without that person’s consent, he commits a first-degree felony if one of the following circumstances is found to exist:

- a. the victim is physically helpless to resist.
- b. the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

- c. the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
- d. the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.
- e. the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.
- f. the victim is physically incapacitated.
- g. the offender is a law enforcement officer, correctional officer, or correctional probation officer, who is certified or is an elected official exempt from certification, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

Public Safety Information Act

The 1997 Legislature passed SB 958 (which was the substance of CS/SB 514), the Florida Public Safety Information Act, with the intent to further the governmental interests of public safety by releasing to the public sexual offender and sexual predator information by a law enforcement agency or a public agency, effective October 1, 1997.

To meet the legislative goal of notifying the public of such offenders, the Sexual Predator Act was amended to provide for different registration procedures for sexual predators. Initial registration is required to be made in person by the sexual predator at a Florida Department of Law Enforcement (FDLE) office or at the sheriff's office in the county in which the predator resides, within 48 hours after establishing permanent or temporary residence. However, if the sexual predator is in the custody, control, or supervision of the Department of Corrections (DOC), the predator must register with the DOC.

If the sexual predator initially registers with the sheriff's office, the sheriff is required to take a photograph and fingerprints and forward them to FDLE along with the information the predator is required to provide by law under §775.21, Florida Statutes.

Subsequent to this initial registration, the sexual predator is required to register in person at a Florida driver's license facility within 48 hours after any change in the predator's permanent or temporary residence. At the driver's license facility, the sexual predator is required, if qualified, to secure a Florida driver's license or license renewal or, in lieu of a driver's license, obtain a Florida

identification card. The sexual predator is required to identify himself or herself as a sexual predator who is required to comply with the Sexual Predator Act, provide his or her permanent or temporary residence, and submit to the taking of a photograph for use in issuing a driver's license, license renewal, or ID card, and for FDLE's use in maintaining current sexual predator records.

The sexual predator is required to pay the costs assessed by the Department of Highway Safety and Motor Vehicles (DHSMV) for issuance, renewal, or reissuance of the driver's license or ID card. Upon request, the sexual predator is required to provide additional information to confirm the predator's identity, including a set of fingerprints. If the driver's license or ID card is subject to renewal, the predator is required to report in person to the driver's license facility, even if the predator's residence has not changed, and shall be subject to the same requirements as previously stated. The DHSMV is required to forward all photographs and information provided to the FDLE and the DOC.

Specific statutory authorization was also provided for any state or local law enforcement agency to release to the public any criminal history information and other information regarding a criminal offender, including public notification of this information, unless the information is confidential and exempt from §119.07(1), Florida Statutes, the Public Records Act, and §24(a), Art. I of the Florida Constitution. FDLE is required to provide a toll-free number for public access to public information regarding sex offenders.

Under the Public Safety Information Act, "sex offender" means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit any of the criminal offenses prescribed as follows, or an analogous offense in another jurisdiction (i.e., another state, under federal jurisdiction, or a foreign country): luring or enticing a child; any sexual battery offense; procuring a child under age 18 for prostitution; lewd, lascivious or indecent assault or act upon or in the presence of a child; use or promoting sexual performance by a child; certain acts in connection with obscenity; computer pornography; selling or transferring custody or control of a minor to promote porn films involving the minor; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed, or
2. Released on or after October 1, 1997, from the sanction imposed for an offense described, which may include, but is not limited to, a fine, probation, community control, parole, conditional release, control release, state or federal incarceration, or incarceration in a local detention facility.

The requirements for reporting are essentially the same as the registration requirements for a sexual predator. A sex offender who does not comply with the reporting requirements commits a third-degree felony.

The information that DOC is required to provide to FDLE must include: name and any alias; the current place of permanent or temporary residence, including the name of the county or

municipality in which the offender resides and, if known, the intended place of residence upon satisfaction of all sanctions; legal status and the scheduled termination date of that legal status; the location of, and local phone number for, any probation, community control, parole conditional release, or control release office which has responsibility for the supervision of the sex offender; an indication of any offenses for which the offender was convicted which involved a victim who was a minor at the time the offense was committed, if this information is known; a physical description; the offense or offenses for which the sex offender was convicted; and a digitized photograph of the sex offender, which shall be taken within 60 days prior to the inmate's release from DOC custody by expiration of sentence, or by December 1, 1997, or within 60 days after the onset of DOC supervision of the sex offender. If the information changes, the DOC must provide FDLE with the updated information. The separate 90-day requirement for taking a photograph of those convicted of robbery, sexual battery, and other designated offenses, was eliminated in the 1997 bill, SB 958.

FDLE is required to provide this sex offender information to any person who requests it, and FDLE and the sheriff or chief of police who receives this information may release the information in any manner deemed "appropriate" provided the information is a public record. DOC, FDLE, and DHSMV, and such agencies' personnel are provided immunity from civil liability for damages for good-faith compliance with this section, and are presumed to have acted in good-faith in compiling, recording, and providing information to the public.

At the time an offender is sentenced for an offense involving a victim who at the time the offense was committed was a minor, the court must stamp the face of the judgment with "VICTIM IS A MINOR" and is required to note this fact on any document or information sent to FDLE for its incorporation into its Florida Crime Information Center (FCIC) system.

Federal Megan's Law

On May 17, 1996, President Clinton signed into law a tougher federal version of New Jersey's "Megan's Law." The federal legislation (PL. 104-145) amends a provision of the Violent Crime Control and Law Enforcement Act of 1994 (PL. 103-322). Title XVII of the 1994 Act, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," requires the Attorney General to establish guidelines for state programs that require a person who is convicted of a criminal offense against a minor or a sexually violent criminal offense, or who is a sexually violent predator, to register a current address with a state or local law enforcement agency for a specified time period. The Wetterling Act also requires the state to allow law enforcement agencies to release relevant information about the offender if they deem it necessary to protect the public. The Federal Megan's Law amends the Wetterling Act to require the state or local law enforcement agency to release relevant information that is necessary to protect the public concerning a person required to register under the Act.

In 1996, the Florida Legislature amended the Sexual Predator Act and §944.606, Florida Statutes, which relates to sexual offender notification. *See generally*, Ch. 96-388, Laws of Florida. The Department of Community Affairs has submitted the legislation to the Department of Justice to

determine if Florida law is in substantial compliance with the federal guidelines in the Wetterling Act, as amended by the Federal Megan's Law. The Wetterling Act provides that any state that fails to implement, by 1997, a program in compliance with the federal mandate, will not receive 10 percent of the formula Byrne funding that would otherwise be allocated to the state. Florida receives approximately \$24.5 million in formula Edward Byrne federal funding per year for state and local funding. The State of Florida receives 10% of that funding, so the state would lose approximately \$2.45 million annually if Florida law did not meet the federal mandate.

III. Effect of Proposed Changes:

Offenders who are designated sexual predators would still have a lifetime sexual predator designation. However, CS/SB 514 would extend the time period that must pass before a sexual predator may petition the court to remove the designation and registration requirements for sexual predators from 10 years to 20 years, if certain criteria is met. The extended time period would apply to offenders designated a sexual predator by a court on or after July 1, 1998. Offenders who were designated a sexual predator prior to July 1, 1998, would still be allowed to petition a court for removal of the designation and registration requirements that accompany such a designation after 10 years have passed since their release from confinement, supervision, or sanction and the offender has not been arrested for any criminal offense. Removal of the sexual predator designation will still be entirely within the discretion of the court.

Procedural requirements are also provided for offenders who petition the court for removal of the sexual predator designation. The procedural requirements are effective on July 1, 1998, and apply to all sexual predators petitioning the court, regardless of when a court designated them a sexual predator. The CS clarifies that a sexual predator must petition *the circuit court in which the predator resides* for the purpose of removing the designation and registration requirements.

The CS also clarifies that the petitioner has the burden of demonstrating certain criteria to the court upon his or her petition. First, the sexual predator must show the court that he or she has not been arrested for any offense since release. Secondly, the sexual predator must convince the court that the predator's requested relief complies with federal standards applicable to the removal of the sexual-predator designation. The court must be satisfied that the predator is not a current or potential threat to public safety.

In all petition for removal of sexual-predator designation cases, the petitioning predator must give the state attorney, in the judicial circuit where the petition is filed, notice of the petition at least 3 weeks before the hearing on the matter. The CS clarifies that the state attorney is specifically authorized to present evidence at the hearing that opposes the predator's petition for removal of the predator designation.

If the court denies the petition, the court is authorized to set a future date at which the sexual predator may again petition the court to have the sexual-predator designation removed, so long as the predator complies with the criteria and procedures that have been clarified and provided in §775.21, Florida Statutes, and this CS.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It appears that there is clarity as to how the provisions of this CS would apply to persons who have already been designated a sexual predator prior to this change in law. Thus, there should not be a violation of the constitutional prohibition against *ex post facto* application of any law. Because the extension of the time period a predator must wait until he or she may have the opportunity to petition the court to remove such designation applies to offenders designated a sexual predator on or after July 1, 1998, the CS would not “disadvantage” such offenders according to case law.

The *Florida Constitution* and the *United States Constitution* state that no *ex post facto* law “shall be passed.” Art. 1, § 10, *Fla. Const.*; Art. 1, §§ 9, 10, *U.S. Const.* In order for a criminal or penal law to be *ex post facto*, it must be retrospective, applying to events occurring before its indictment, and must disadvantage the offender affected by it. *Weaver v. Graham*, 450 U.S. 24, 29 (Fla. 1981). The Court held that no *ex post facto* violation occurs when the change effected is merely procedural and does not increase the punishment or change the elements of the offense or the ultimate facts necessary to establish guilt. *See generally, id.* However, a law is an *ex post facto* law if it applies to events occurring before it existed, and which it disadvantages the affected offender. *See, Blankenship v. Dugger*, 521 So.2d 1097 (Fla. 1988).

If the CS had applied to all offenders designated sexual predators, including those so designated prior to July 1, 1998, a key question in the *ex post facto* analysis of retroactive application of the instant legislation would have been whether the opportunity to seek removal of the sexual predator designation and its requirements pursuant to §775.21, *Florida Statutes*, is a “substantial substantive right” of offenders who are affected by the statute. *Dugger v. Williams*, 593 So.2d 180 (Fla. 1991); *Blankenship, supra*; *Roberson v. State*, 555 So.2d 976 (Fla. 1st DCA) (1990); and *Glover v. State* 474 So.2d 886 (Fla. 1st DCA) (1985). It is quite possible that courts would have determined that the prospect of removal of sexual

predator designation and future registration requirements is not a substantial substantive right held by such designees. Unequivocally, whether the designation is removed by the court is discretionary and in the sole province of the court. *See*, §775.21 (6) (g), Florida Statutes. Based on this fact, it is quite possible that a court would have found that a substantial substantive right does not exist where there is *a mere possibility* and not a well-founded expectation, that the court could remove the sexual predator designation resulting in the retroactive application of this change as being constitutionally permissible.

Clearly, there should not be an issue of constitutionality of this CS if it is applied to offenders designated as a sexual predator *on or after* the effective date of the CS , or prospectively. *See generally, Waldrup v. Dugger*, 562 So.2d 687 (Fla. 1990).

All of the procedural requirements that have been set out in the CS should be able to be applied retroactively without a violation of the prohibition against *ex post facto* application of the law. The clarification that petitions must be filed in the judicial circuit in which the sexual predator resides and the 3-week minimum notice to the state attorney of the hearing supplies definiteness to the procedural requirements that essentially already exist. Likewise, the requirement that there must be compliance with federal standards for removal of the designation and that the court must be convinced that there is not present or future threat to public safety by removing the designation is just codifying the present situation and practice. Furthermore, it is anticipated that retroactive application of these measures would not be a violation of the *ex post facto* clause because they are purely procedural and do not infringe upon a substantive right of the sexual predators.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Theoretically, it could be argued that there is a positive fiscal impact to the government because there would be a reduction in court time for those offenders who meet the present statutory criteria under §775.21, Florida Statutes, to petition the court to remove the sexual predator designation. Conversely, however, it is arguable that other state agencies involved in the registration and oversight of sexual predators would be required to continue such oversight and involvement for the lifetime of the sexual predator designees. Any fiscal impact upon the governmental sector, although indeterminate, is anticipated to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
