

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Criminal Justice Committee

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BILL: SB 1802

INTRODUCER: Senator Lynn

SUBJECT: Sexual Offenders/Registration

DATE: March 21, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Bill 1802 allows for certain registered sexual offenders to petition the court for removal of the registration requirements sooner than would be authorized under current law. The offender's qualifying offense must be a lewd offense under s. 800.04, F.S., the offender must have been 15-19 years of age on the date the lewd offense was committed, and the offender must meet other criteria of the bill regarding the victim's age; absence of an arrest record for a specified sexual offense when the offender was convicted of the lewd offense, except for the arrest for the lewd offense; absence of an arrest record since the date of the conviction for the lewd offense; and absence of a requirement to register as a sexual offender in another state.

The bill provides that if the sexual offender is not serving the sentence imposed for the lewd offense, he or she may submit the petition on or after the effective date of the bill. If the sexual offender was sentenced for the lewd offense before the effective date of the bill and is still serving this sentence, he or she may submit the petition on or after the effective date of the bill and may again submit the petition after this sentence is served. If the sexual offender is sentenced for the lewd offense on or after the effective date of the bill, he or she may submit the petition at the time of sentencing for the lewd offense and may again submit the petition after this sentence is served.

The bill specifies what the court may or must consider at a hearing on the petition. The court may grant the petition, if certain criteria are found to be met. The bill also requires that notice be provided to the state attorney regarding the petition, when applicable; authorizes the state attorney to present evidence in opposition to the petition; and specifies the procedure for removing the offender from the registry after the court grants his or her petition.

This bill substantially amends the following sections of the Florida Statutes: 943.0435 and 944.607.

## II. Present Situation:

### A. Sexual Offender Registration

Section 944.0435, F.S., provides that a “sexual offender” means any of the following:

- A person who has been released on or after October 1, 1997, from the sentence imposed in this state or any other jurisdiction for a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the following offenses proscribed in this state or similar offenses in another jurisdiction:
  - Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim’s parent (ss. 787.01 and 787.02, F.S.);
  - Luring or enticing a child where the victim is a minor and the defendant is not the victim’s parent (s. 787.025, F.S.);
  - Sexual battery (under ch. 794, F.S., but excluding s. 794.011(10), F.S., and s. 794.0235, F.S.);
  - Procuring a person less than 18 years of age for prostitution (s. 796.03, F.S.);
  - Lewd/lascivious offenses committed upon or in the presence of a person less than 16 years of age (s. 800.04, F.S.);
  - Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult (s. 825.1025, F.S.);
  - Sexual performance by a child (s. 827.071, F.S.);
  - Providing obscene material to a minor (s. 847.0133, F.S.);
  - Computer pornography (s. 847.0135, F.S.);
  - Electronic transmission of child pornography (s. 847.0137, F.S.);
  - Electronic transmission to minors of material harmful to them (s. 847.0138, F.S.);
  - Selling or buying of minors for portrayal in a visual depiction of the minor engaging in sexually explicit conduct (s. 847.0145, F.S.); or
  - Any similar offense committed in this state which has been redesignated from a former statute number and is one of the offenses previously described.
- A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.
- A person who establishes or maintains a residence in this state and who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the offenses previously described or any similar offense in another jurisdiction.

A sexual offender must report in person at an office of the Florida Department of Law Enforcement (FDLE) or at the sheriff's office in the county in which the offender establishes or maintains a permanent or temporary residence, within 48 hours after establishing permanent or temporary residence in this state or within 48 hours after being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.

The sexual offender must provide his or her name, date of birth, social security number, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, occupation and place of employment, address of permanent or legal residence or address of any current temporary residence, within the state and out of state, including a rural route address and a post office box, date and place of each conviction, and a brief description of the crime or crimes committed by the offender. Other information must be provided if the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home; or if the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state. If the sexual offender reports at the sheriff's office, the sheriff is required to take a photograph and a set of fingerprints of the offender.

Within 48 hours after this reporting, the sexual offender must report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV), unless a driver's license or identification card was previously secured or updated under s. 944.607, F.S. At the driver's license office the sexual offender must, if otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual offender must also provide other information as specified in this section and submit to the taking of a photograph.

Each time a sexual offender's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change in the offender's permanent or temporary residence or change in the offender's name by reason of marriage or other legal process, the offender must report in person to a driver's license office, and provide information as specified in this section.

A sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence must, within 48 hours after vacating the permanent residence, report in person to the FDLE or the sheriff's office of the county in which he or she is located. The sexual offender must specify the date upon which he or she intends to or did vacate such residence, provide or update registration information, and provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

A sexual offender who remains at a permanent residence after reporting his or her intent to vacate such residence must, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report this information in person to the agency to which he or she reported vacating such residence.

County and local law enforcement agencies, in conjunction with the FDLE, are required to verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of

the DOC. Therefore, sexual offenders must also provide whatever information is deemed necessary to comply with this verification.

A sexual offender who intends to establish residence in another state or jurisdiction must report in person to the sheriff of the county of current residence or the FDLE within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The notification must include the address, municipality, county, and state of intended residence.

A sexual offender who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this state must, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report in person to the sheriff or department, whichever agency is the agency to which the sexual offender reported the intended change of residence, of his or her intent to remain in this state.

A sexual offender must also report in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. This reregistration includes the same sort of information that the sexual offender provides on initial registration; and the name, address, and county of each institution of higher education in this state, if the sexual offender is enrolled, employed, or carrying on a vocation at such institution.

A sexual offender must maintain registration with the FDLE for the duration of his or her 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 meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, if:

- The offender has been lawfully released from confinement, supervision, or sentence, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release; or
- The offender was 18 years of age or under at the time the offense was committed and the victim was 12 years of age or older and adjudication was withheld for that offense, who is released from all sentences, who has had 10 years elapse since having been placed on probation, and who has not been arrested for any felony or misdemeanor offense since the date of conviction of the qualifying offense.

The court may grant or deny such relief if the sexual 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 Jacob Wetterling Act, as amended, 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, subject to the standards for relief provided in this subsection. The FDLE must remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the FDLE a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

A sexual offender who is required to register because of a sexual offender designation in another state or jurisdiction must maintain registration with the FDLE for the duration of his or her life until the person provides the FDLE with an order issued by the court in which the designation was issued which states that such designation has been removed or demonstrates to the FDLE that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

Numerous criminal penalties are provided for a sexual offender's non-compliance with registration and other requirements of the section.

Section 944.607(1), F.S., requires the Department of Corrections (DOC) to notify the FDLE of information regarding certain persons who meet the definition of "sexual offender" in s. 944.607(1), F.S. Section 944.607(1), F.S., provides that, as used in the section, "sexual offender" means a person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility:

- On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the offenses previously described in the explanation of s. 943.0435(1), F.S.; or
- Who establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.

If the sexual offender is under DOC supervision but is not incarcerated, the offender must register with the DOC and provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; and permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state (which is verified by the DOC), including any rural route address or post office box.

If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender must provide the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status must be reported to the DOC within 48 hours after the change in status.

The sexual offender must submit to the taking of a digitized photograph of the offender which must have been taken within 60 days before the offender is released from DOC custody or the custody of a private correctional facility by the expiration of sentence under s. 944.275, F.S., or must have been taken by January 1, 1998, or within 60 days after the onset of DOC supervision of any sexual offender who is on probation, community control, conditional release, parole, provisional release, or control release or who is supervised by the DOC under the Interstate Compact Agreement for Probationers and Parolees. If the sexual offender is in the custody of a private correctional facility, the offender must submit to the taking of a digitized photograph of the offender within the same time period described for sexual offenders in DOC custody.

A sexual offender in DOC custody is registered by the DOC. A sexual offender in the custody of a local jail is registered by the jail's custodian (the offender must also submit to the taking of a digitized photograph of the offender). A sexual offender under federal supervision may be registered by the federal agency responsible for supervising the offender.

A sexual offender who is under DOC supervision but who is not incarcerated must, in addition to the registration requirements previously described, register in the manner provided in s. 943.0435(3), (4), and (5), F.S. (reporting to a driver's license office and reporting to a sheriff's office (vacating a residence, etc.)), and reregister in a manner virtually identical to that provided in s. 943.0435, F.S.

The process for a sexual offender to petition for removal of registration requirements is identical to the process provided in s. 943.0435, F.S.

Numerous criminal penalties are provided for sexual offender's non-compliance with registration and other requirements of the section

#### **B. Notification of Sexual Offender Information**

Section 943.043, F.S., provides that the FDLE may notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure. The FDLE is required to provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual offenders and may provide other information reported to the FDLE which is not exempt from public disclosure. The FDLE must also provide to any person, upon request and at a reasonable cost determined by the FDLE, a copy of the photograph of any sexual offender or sexual predator which the FDLE maintains in its files and a printed summary of the information that is available to the public under this section.

Sections 943.043, 943.0435(12), and 944.606(4), F.S., authorize public/community notification of information regarding registered sexual offenders.

#### **C. Concerns raised about the inclusion of a subpopulation of sexual offenders in the registry**

There have been concerns raised in the media about the inclusion of a subpopulation of sexual offenders on the registry. As best as staff can ascertain based on news reports, this subpopulation consists of young adults and older minors who purportedly engaged in "consensual" sexual

activity with an older minor, the age differential was relatively narrow, and such activity resulted in a conviction for an offense that requires sexual offender registration.<sup>1</sup>

The Jessica Lunsford Task Force,<sup>2</sup> in a recent report it provided to the Legislature, found that “[t]estimony was taken regarding the observation that the sex offender registry contains persons who are required to register for crimes that would not be a crime except for the age of the victim at the time of the offense (i.e., consensual sex between boyfriend and girlfriend).” In its recommendations, the task force stated: “[w]hile not under the information sharing purview of the Jessica Lunsford task force, the Legislature should be aware of the finding and assess whether any actions are warranted.”<sup>3</sup>

Assuming lawmakers agree on who should be included in this subpopulation, that “consensual” sexual activity among members of this subpopulation is possible, and that the law should be changed to provide for some mechanism for the removal of such members from the registry if they engage in “consensual” sexual activity,<sup>4</sup> the task then becomes how to determine whether “consensual” sexual activity occurred. This is not an easy undertaking.

The sexual offender may assert that “consensual” sexual activity occurred but this assertion is suspect because of self-interest. Assuming a victim is within the age range of the subpopulation determined to be able to consent to sexual activity, a victim’s assertion that “consensual” sexual activity occurred may still be suspect as being coerced.<sup>5</sup>

Offenses involving sexual activity among this subpopulation shed little light on whether “consensual” sexual activity occurred and may suggest the opposite. There appear to be two offenses relevant to sexual activity among this subpopulation: sexual battery offenses in s. 794.011, F.S., and lewd offenses in s. 800.04, F.S.<sup>6</sup> If a person pleads to or is found guilty by a jury of a sexual battery offense, this does not necessarily suggest that consensual activity occurred; in fact, the elements of sexual battery offenses suggest otherwise. All of the sexual

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<sup>1</sup> See, e.g., “Lawmakers grapple with sex-offender laws,” *Daytona Beach News-Journal* (February 27, 2006); “State panel works on details of new child-sex law,” *Tallahassee Democrat* (January 5, 2006); “Sex Offender: What does it mean?” *St. Petersburg Times* (November 20, 2005).

<sup>2</sup> This task force was created by the Jessica Lunsford Act, ch. 2005-28, L.O.F.

<sup>3</sup> *Jessica Lunsford Task Force, Criminal and Juvenile Justice Information Systems Council* (February 6, 2006), page 4.

<sup>4</sup> Staff assumes that such changes would be made consistent with the Florida’s “offense-based” registry, in which a person qualifies for inclusion based upon the commission of a particular offense. There is another means for addressing this subpopulation. Some states have a “risk-based” registry in which only sexual offenders assessed to be a risk to public safety are placed on the registry. However, it should be noted that moving from an offense-based registry to a risk-based registry would be a sea change in the law and would put Florida “back to square one” in the courts and with the Department of Justice. Florida’s registry has withstood every federal and state challenge raised against it and the Department of Justice has determined that Florida’s registry laws are consistent with federal requirements. Also, risk-based registries have not been immune from criticism. See, e.g., “N.J sex offender list rife with problems/Star Ledger analysis finds variations and discrepancies abound in the Internet registry,” *The Star-Ledger* (Newark, NJ) (May 20, 2005).

<sup>5</sup> Assuming agreement that a minor victim (of a particular age) is capable of engaging in consensual sexual activity, a combination of factors might provide a more reliable indicator of that victim’s consent, e.g., the victim stated that the sexual activity was consensual, the victim was relatively close in age to the perpetrator, the victim was an older minor, there was no evidence of force or coercion, the perpetrator had no prior history of sexual offenses, etc.

<sup>6</sup> Section 794.05, F.S., does not appear to apply to the subpopulation. This statute punishes a person 24 years of age or older who engages in sexual activity with a 16 or 17 year-old. At the very least the age differential is 7 years and the age provision is open-ended, so it also applies to any person over 24 years of age.

battery offenses include an element that is indicative of non-consent, such as tender age (the victim was under 12 years of age), severe injury to the victim, the drugging of the victim, use or threat of using a deadly weapon, or, in the least serious (in terms of felony degree) sexual battery offense, was committed upon a person 12 years of age or older, without that person's consent, and in the process thereof the perpetrator does not use physical force or and violence likely to cause serious personal injury. Further, the victim's consent is not a defense that can be raised to a sexual battery offense.

It is less clear whether "consensual" sexual activity could be swept up in the net for prosecution and punishment under s. 800.04, F.S. For example, the statute proscribes lewd battery. A "person" (any age) can commit lewd battery by engaging in "sexual activity" (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) with a person 12 years of age or older but less than 16 years of age. In this type of lewd battery, there is no element of the offense that indicates force or coercion. However, victim's consent is not a defense that can be raised to lewd battery or to any other offense (lewd molestation, lewd conduct, or lewd exhibition). Therefore, the commission of an offense under s. 800.04, F.S., of itself, does not appear to necessarily indicate there was "consensual" sexual activity, even were there agreement that "consensual" sexual activity could occur between a young adult/older minor and a child 12 to 15 years of age.

Information in records may be examined in trying to ascertain if the sexual activity was "consensual." However, how much, if any, of that information is not subject to dispute? For example, the prosecution and defense are unlikely to agree on much, if any, of the information reported in an arrest report. There is one piece of information that at least bears an imprimatur: a judicial finding at sentencing that the victim consented, which may serve as the basis for mitigating (reducing) a sentence. For example, while the Legislature has precluded consent as a defense to some sexual offenses, it has not expressly precluded victim's consent from serving as the basis for mitigating a sentence. Section 921.0026(2)(f), F.S., provides as a mitigating circumstance that "[t]he victim was an initiator, willing participant, aggressor, or provoker of the incident." The plain language of the law does not limit the mitigator to adult victims or to non-sexual offenses, even those in which such consent is not a defense.<sup>7</sup>

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<sup>7</sup> In *State v. Rife*, 789 So.2d 288, 292 (Fla. 2001), the Florida Supreme Court, in determining the scope of a similar mitigator applicable to sentencing under the former sentencing guidelines, stated: "If the Legislature had intended to prohibit downward departures even if the minor consented to the activity, it could have expressly provided for such a prohibition in either the laws governing sexual crimes involving minors or the sentencing guidelines. It did neither." While the Court determined the law did not preclude a sentence being mitigated on the basis of victim's consent, it was not indicating that all mitigations on this basis were proper. The Court noted that the Fifth District Court of Appeal in *State v. Rife*, 733 So.2d 541 (Fla. 5th DCA 1999)(en banc) "explained, even if a trial judge finds that a mitigating factor exists, it is still within the trial judge's discretion whether the guideline sentence should be reduced. Thus, when the appellate court reviews a downward departure sentence there are two inquires: 'First is there record support that the mitigating factor is actually present? Second, even if the mitigating factor is present, did the judge abuse his or her discretion in departing downward?'" *Id.* at 295, quoting *Rife*, 733 So.2d at 543. The Court also noted that "the Fifth District in *Rife* indicated that it is indeed the rare case involving a youthful victim of a sexual crime that would support a downward departure sentence." *Id.* at 296, citing *Rife*, 733 So.2d at 544.



### III. Effect of Proposed Changes:

**Section 1** amends s. 943.0435, F.S. The amendment retains the current provision that a sexual offender must maintain registration with the FDLE for the duration of his or her 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 meets the criteria for classifying the person as a sexual offender for purposes of registration. This section also retains the current provision of this statute regarding the procedures and time period applicable to a sexual offender who seeks to petition the court for the purposes of removing the requirement to register as a sexual offender. However, the bill modifies the petition provision to allow an exception to it. This exception provides for a more expedited review process of a sexual offender's petition if the court determines the sexual offender meets certain criteria.

Specifically, a sexual offender may petition a court for the purpose of removing the requirement to register if the offender meets *all* of the following criteria:

- The offender was convicted of a violation of s. 800.04, F.S. (lewd offenses), regardless of the date of such conviction.
- On the date of such conviction, the offender had no record of an arrest for an offense described in s. 943.0435(1), F.S., or s. 775.21(4), F.S., other than the arrest that resulted in such conviction.
- The offender has not been arrested for any felony or misdemeanor offense since the date of such conviction.
- On the date the offender committed the offense applicable to such conviction, the offender and the victim were not older than 19 years of age or younger than 15 years of age. ***The age of the victim identified in the bill is inconsistent with s. 800.04, F.S., which does not pertain to offenses against persons over the age of 15. (See "Technical Deficiencies" section of this analysis). This is a drafting error. HB 1511, the House companion to SB 1802, does not contain this error and limits the victim's age to 15 years of age, which is consistent with s. 800.04, F.S. Assuming the bill is amended to correct this error (the sponsor's office has indicated it intends to do such an amendment), the victim's age would be 15 years of age.***
- The offender is not required to register as a sexual offender or other similar designation in another state or jurisdiction for a violation of the laws of that state or jurisdiction.

A sexual offender who meets this criteria may petition the criminal court of the circuit in which the offender was sentenced for the conviction for the lewd offense for the purpose of removing the requirement to register as a sexual offender. The court may grant or deny the petition if the offender demonstrates to the court that he or she meets the criteria previously described for the expedited review of a petition, if the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, 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 if the court is otherwise satisfied that the offender is not a current or potential threat to public safety.

In determining whether to grant or deny the petition, the court may consider any information or record submitted to the court at the hearing on the petition. However, the court shall consider any information or record submitted to the court at the hearing on the petition regarding whether the offender engaged in the lewd offense by means or use of force or coercion as defined in s. 800.04(1)(c), F.S.,<sup>8</sup> and whether the “willing participant” mitigating factor was found to be a factor in mitigation of the offender’s sentence for the lewd offense, if the sentence was mitigated. If the court determines that the offender engaged in the lewd offense by means or use of force or coercion, the court must deny the petition.

The state attorney for the circuit 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 reasons why the petition should be denied. If the court grants the petition, the FDLE shall remove the offender from classification as a sexual offender for purposes of registration and notification if the offender provides to the FDLE a certified copy of the court’s written findings or order granting the petition, which must indicate that, pursuant to this expedited review provision, the court has determined that the offender is not required to comply with requirements for registration as a sexual offender. If the court denies the petition, the sexual offender may petition only for removal of the requirement to register as a sexual offender as provided in the general provision applicable to petitions for removal of sexual offender registration requirements, i.e., a sexual offender who has been lawfully released from confinement, supervision, or sentence, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender.

This expedited review provision replaces a current expedited review provision applicable to a sexual offender who is 18 years of age or under at the time the offense was committed and the victim was 12 years of age or older and adjudication was withheld for that offense, who is released from all sentences, who has had 10 years elapse since having been placed on probation, and who has not been arrested for any felony or misdemeanor offense since the date of conviction of the qualifying offense.

According to staff at the FDLE, only one person has ever petitioned pursuant to this provision. The FDLE staff also indicated that it appears that the pool of offenders affected by the bill will be no more than 36 and may be less.

The amendment of s. 943.0435, F.S., indicates that the expedited review provisions of the bill are applicable to a “sexual offender,” as that term is defined in this section who meets the criteria, i.e., a sexual offender who has been released from the sentence imposed for the offense or offenses that required the offender to register as a sexual offender. Other provisions of the bill deal with sexual offenders who are sentenced for a qualifying offense on or after the effective

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<sup>8</sup> “Coercion” means the use of exploitation, bribes, threat of force, or intimidation to gain cooperation or compliance.

date of the bill or who were sentenced for a qualifying offense before the effective date of the bill and are still serving their sentence for this offense when the bill takes effect.

**Section 2** amends s. 944.607, F.S., to provide an expedited review process that is almost the same as provided in Section 1 of the bill. The few differences are noted. This section is amending a statute that applies to a sexual offender who 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. The bill provides that a sexual offender (who meets the criteria previously described in the discussion of Section 1 of the bill) may petition the court that is sentencing or has sentenced the offender for the conviction for the qualifying lewd offense for the purpose of removing the requirement to register as a sexual offender, regardless of whether the offender is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility or a local detention facility (e.g., a county jail).

If the offender was sentenced on or after October 1, 2006 (the effective date of the bill), for such conviction, the offender may petition for removal of the requirement to register as a sexual offender at the time of sentencing for the lewd offense. If the petition is denied, this sexual offender has another opportunity to submit a petition after he or she is released from this sentence. In other words, at that point, the sexual offender may avail himself or herself of the expedited review process provided in s. 943.0435, F.S., as amended by the bill.

If the offender was sentenced before October 1, 2006, for such conviction and the offender is still serving the sentence for the lewd offense, the offender may petition the court that imposed this sentence for removal of the requirement to register as a sexual offender while the offender is still serving this sentence. If the petition is denied, this sexual offender has another opportunity to submit a petition after he or she is released from this sentence. In other words, at that point, the sexual offender may avail himself or herself of the expedited review process provided in s. 943.0435, F.S., as amended by the bill. The petition procedures provided in Section 2 of the bill are otherwise identical to those provided in Section 1 of the bill, except that the state attorney is not given the 3-weeks advance notice before the hearing on the matter as provided in s. 943.0435, F.S., because the offender is either petitioning at time of sentencing or while serving his or sentence and under the jurisdiction of the sentencing court.

The bill takes effect on October 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The age of the victim identified in the bill is inconsistent with s. 800.04, F.S., which does not pertain to offenses against persons over the age of 15. This is a drafting error. HB 1511, the House companion to SB 1802, does not contain this error and limits the victim's age to 15 years of age, which is consistent with s. 800.04, F.S. Staff recommends that the bill be amended to correct this error. The sponsor's office has indicated it intends to do such an amendment; the victim's age would be 15 years of age.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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

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