

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1890

INTRODUCER: Criminal Justice Committee and Senator Storms

SUBJECT: Sexual Predator Identifiers

DATE: April 22, 2011 REVISED: 04/25/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Boland	Maclure	JU	Fav/1 amendment
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends statutes relating to sexual predators and sexual offenders. The most significant changes relate to requirements for reporting, including requiring sexual predators and sexual offenders to:

- Report more types of identifiers used for activities on the Internet than are currently required, which will give law enforcement agencies more information to identify sexual predators and sexual offenders if they engage in unlawful activities on the Internet.
- Provide information relating to a passport, and requiring those who are aliens to provide information documenting their immigration status.
- Report to the county sheriff within 21 days before his or her departure date when planning to reside outside of the United States for more than seven days.

Other provisions of the bill:

- Allow sexual predators and sexual offenders to avoid violating a reporting requirement by reporting a change of address or change of name to the county sheriff's office if they cannot report it to a driver's license within 48 hours of the change.

- Allow a sexual offender who is not more than four years older than his or her victim to petition to be relieved from the requirement to register if the victim was 13-18 years old, rather than the current 14-17 years old.
- Expand the sexual offender category to include adults who are convicted of incest with a victim who was a minor.
- Require state agencies and governmental subdivisions to check the Dru Sjodin National Sex Offender Public Website before allowing a person to work or volunteer at a park, playground, day care center, or other place where children regularly congregate.
- Remove the requirement for a sentencing court to restrict sexual predators and sexual offenders from having contact with minors if treatment is recommended. Section 948.30(1)(e), F.S., already restricts probationers and community controllees who have been convicted of certain sex offenses from having contact with minors.

This bill substantially amends the following sections of the Florida Statutes: 775.21, 943.0435, 943.04351, 943.04354, 943.0437, 944.606, 944.607, 947.005, 948.31, 985.481, and 985.4815.

II. Present Situation:

Sexual Predator and Sexual Offender Reporting Requirements

The distinction between a sexual predator and a sexual offender is based on the offense, the date the offense occurred or when sanctions were completed, and whether the person was previously convicted of a sexual offense. Conviction of committing or attempting to commit any of the following offenses would require registration as either a sexual offender or a sexual predator:¹

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery (s. 794.011, F.S., except false accusation of another under subsection (10)).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S., except owners or operators of computer services liable under subsection (6)).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

¹ The criteria for designation as a sexual predator are found in s. 775.21, F.S. The criteria for registration as a sexual offender are found in s. 943.0435, F.S.

Designation as a sexual predator requires either: (1) conviction of one of the enumerated offenses after having previously been convicted of one of the offenses, or (2) conviction of a capital, life, or first-degree felony violation of s. 787.01, F.S., or s. 787.02, F.S., where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, F.S., s. 800.04, F.S., s. 847.0145, F.S., or conviction for violating a similar law of another jurisdiction. Sexual predator status can only be conferred as the result of offenses committed on or after October 1, 1993.²

The requirement to register as a sexual offender is triggered by conviction of committing or attempting, soliciting, or conspiring to commit one of the offenses, transmission of child pornography by electronic device,³ or transmission of material harmful to minors to a minor by electronic device.⁴ It applies only when the offender was released from the sanction for the offense on or after October 1, 1997.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.⁵ Those in custody will be registered by the agency by which they are held. Persons under the supervision of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ) must register with the respective department. All others must register at the county sheriff's office within 48 hours of either: (1) being designated as a sexual predator; (2) convicted of an offense that requires registration as a sexual offender; or (3) establishing a residence in the county.⁶

A variety of personally identifying information must be provided to the sheriff's office as part of the registration process. This information includes the address of a legal residence or temporary residence or the address, location, or description of a transient residence, any electronic mail address, and any instant message name.⁷

The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established. Transient residence is defined as:

a place or 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

² Section 775.21(4) and (5), F.S.

³ Section 847.0137, F.S.

⁴ Section 847.0138, F.S.

⁵ The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

⁶ *Id.*

⁷ Section 775.21(6).

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.⁸

The predator or offender must also report his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. However, this notice must be given in person to the county sheriff, not to the driver's license office.⁹

Predators and offenders are also required to keep information concerning electronic mail addresses and instant message names in the same manner as is required for a change of residence. This includes providing the information within 48 hours of establishing or changing an electronic mail address or instant message name.¹⁰

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent, temporary, or transient residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.¹¹

The DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent, temporary, or transient address, if known during the time of incarceration or residential commitment.¹²

Removal from Requirement to Register Under Certain Circumstances

Section 943.04354, F.S., allows a person to petition for removal of the requirement to register as a sexual offender or sexual predator if he or she meets the following initial criteria and the removal of the registration requirement will not conflict with federal law:

- The person was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S. (sexual battery), or s. 800.04, F.S. (lewd offenses), or has committed a violation of either statute for which adjudication was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of s. 794.011, F.S., or s. 800.04, F.S.;
- The person is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- The person is not more than four years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

⁸ Section 775.21(2)(m), F.S.

⁹ Section 775.21 (6)(j), F.S.

¹⁰ Section 775.21(6)(g)4., F.S.

¹¹ Section 775.21(7)(a), F.S.

¹² Section 944.606(3)(a), F.S.

If the violation of s. 794.011, F.S., or s. 800.04, F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the registration requirement.¹³ The state attorney must be given notice 21 days before the date of sentencing or disposition of this violation, and may oppose the motion. At sentencing or disposition of this violation, the court shall rule on this motion, and if the court determines the person meets the initial criteria 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 court denies the motion, the person is not authorized to petition further for removal of the registration requirement.¹⁴

Although s. 943.04354, F.S., does not limit removal of the registration requirement to convictions resulting from consensual acts that otherwise meet the criteria, a petitioner will probably also be subject to the registration requirements of the federal Adam Walsh Act. Section 111(5)(C) of the Adam Walsh Act¹⁵ provides that offenses involving consensual sexual conduct are not sex offenses for purposes of the federal act given certain provisions and the age of the offender and the victim. In order to avoid conflicting with the Adam Walsh Act, the court hearing the motion would be required to determine that the violation involved consensual sexual conduct.¹⁶

III. Effect of Proposed Changes:

Reporting Requirements for Sexual Predators and Sexual Offenders

Internet Identifiers

The bill replaces the term “instant message name” with “Internet identifier” wherever it is used in relation to sexual predators or sexual offenders. “Internet identifier” encompasses more Internet-related activity than the current “instant message name,” so this will require sexual predators and sexual offenders to report more types of identifiers used for activities on the Internet than are currently required. The terms are defined as follows:

- In the current statute, an “instant message name” is “an identifier that allows a person to communicate in real time with another person using the Internet.”
- In the bill, an “Internet identifier” is “all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).”¹⁷

¹³ For this group, a public defender will be available to provide representation.

¹⁴ Section 943.04354, F.S.

¹⁵ Adam Walsh Child Protection and Safety Act of 2006, Public Law No. 109-248, § 111(5)(C), 120 Stat 587 (2007).

¹⁶ Similar provisions are provided for persons who would meet the initial criteria, except that their violation was not committed on or after July 1, 2007 (e.g., persons incarcerated or on supervision for a violation committed before July 1, 2007, and persons who have already served their sentence or disposition for the violation). These persons petition for removal of the registration requirement in the court in which the sentence or disposition for the violation occurred. Notice to the state attorney is provided at least 21 days before the hearing on the petition. In all other respects, the procedures are the same as previously described.

¹⁷ The bill also provides that voluntary use of a birth date, social security number, or PIN as an Internet identifier constitutes a waiver of the right of non-disclosure of such information.

The current requirement to report any “instant message name” applies only to communications in real time, such as instant messaging and Internet chats. The new requirement to report all “Internet identifiers” includes communications that are not in real time, such as posting on a social networking site or on a newspaper comment board. It is also expected that it will include any future advancements in Internet communications. Therefore, the bill will result in law enforcement having more information to identify sexual predators and sexual offenders who engage in unlawful activities on the Internet.¹⁸

The bill replaces the current requirement that a sexual predator or sexual offender report *any* instant message name, electronic mail address, and home and cellular telephone number with the new requirement to report *all* Internet identifiers, electronic mail addresses, and home and cellular telephone numbers in the following places:

- Section 775.21, F.S. (the Florida Sexual Predators Act), in Section 1 of the bill.
- Section 943.0435, F.S. (sexual offenders required to register with FDLE), in Section 3 of the bill.
- Section 943.0437, F.S. (commercial social networking websites), in Section 4 of the bill.
- Section 944.606, F.S. (notification upon release of sexual offenders), in Section 6 of the bill.
- Section 944.607, F.S. (notification to FDLE of information on sexual offenders), in Section 5 of the bill.

The bill amends s. 985.481, F.S., concerning notification by the Department of Juvenile Justice upon release of a sexual offender who was adjudicated delinquent, to require the reporting of all home and cellular telephone numbers. It does not address Internet identifiers.

Passport and Immigration Information

The bill creates new reporting requirements for sexual predators or sexual offenders. Those with a passport must either produce it or provide information about it. Also, a sexual predator or sexual offender who is an alien must produce documentation or provide information about his or her immigration status. These new requirements are included in the following statutes:

- Section 775.21, F.S. (the Florida Sexual Predators Act), in Section 1 of the bill.
- Section 943.0435, F.S. (sexual offenders required to register with FDLE), in Section 3 of the bill.
- Section 943.0437, F.S. (commercial social networking websites), in Section 4 of the bill.
- Section 944.606, F.S. (notification upon release of sexual offenders), in Section 6 of the bill.
- Section 944.607, F.S. (notification to FDLE of information on sexual offenders), in Section 5 of the bill.
- Section 985.481, F.S. (notification upon release of sexual offender adjudicated delinquent), in Section 10 of the bill.
- Section 985.4815, F.S. (notification to FDLE of information on juvenile sexual offenders), in Section 11 of the bill.

¹⁸ The change from “any” to “all” is intended to preclude an argument that an offender or predator with more than one Internet identifier could meet the requirement by reporting only one of them. The same change to “all” was made with respect to reporting of electronic mail addresses and telephone numbers.

Reporting of Change of Address

Sections 775.21(6)(g)1. and 943.0435(4)(a), F.S., require sexual predators and sexual offenders, respectively, to report any change of permanent, temporary, or transient residence within the state, or change in name, to the driver's license office within 48 hours. The bill allows a predator or offender who is unable to meet the 48 hour timeframe to avoid violating the registration requirement by reporting the information to the sheriff's office within 48 hours and providing confirmation of reporting it to the Department of Highway Safety and Motor Vehicles. This will allow compliance by a reporting individual when he or she moves at a time that the driver's license office is closed, such as the beginning of a holiday weekend.

Notification Regarding Establishing Residence in Another State or Jurisdiction

Currently, a predator or offender who plans to establish a residence in another state or jurisdiction must give in-person notification to the county sheriff of his or her intent within 48 hours of the intended change. A person who changes his or her mind after giving such notification must notify the sheriff of the change of plans within 48 hours after time of the intended departure. The bill amends s. 775.21(6)(i), F.S., to require that a sexual predator give notification of an intended change of residence within 21 days before the planned departure date if he or she intends to reside outside of the United States for seven days or more. The bill amends s. 943.0435(7), F.S., in the same way with respect to sexual offenders. This means that the predator or offender can give notice at any time from 21 days before departure up until the actual departure.

The bill clarifies that the notification requirement applies when the person intends to establish residence in another state, a jurisdiction other than the State of Florida, or another country.

Requiring Reporting for Conviction of Incest

The bill amend ss. 943.0435(1)(a)1.a.(I), 944.606(1)(b), and 944.607(1)(a)1., F.S., respectively, to expand the definition of sexual offender to include an adult who is convicted of violating s. 826.04, F.S. (prohibiting incest), if the victim was a minor. Incest is a third-degree felony that occurs when there is a marriage or sexual intercourse between persons who are related by lineal consanguinity (children, parents, grandparents, etc.) or a brother, sister, uncle, aunt, nephew, or niece.

It is a crime for any person to have consensual sexual activity with a minor who is 15 years of age or younger,¹⁹ and it is also a crime for a person who is 24 years of age or older to have consensual sexual activity with a minor who is 16 or 17 years old.²⁰ However, consensual sexual activity between a person who is under 24 years of age and a 16- or 17-year-old minor is not a crime unless it constitutes incest. The bill will require a person who is less than 23 years old to register as a sexual offender if he or she is convicted of incest for marrying or engaging in sexual activity with a 16- or 17-year-old relative. It will also affect persons over 23 years old who are convicted of incest with a minor relative if, for some reason, they are not convicted of one of the other offenses that trigger the registration requirement.

¹⁹ Consensual sexual activity between a person of any age and a minor who is under 16 years of age is a lewd or lascivious offense prohibited by s. 800.04, F.S. The degree of offense depends upon the age of the offender and the type of activity.

²⁰ See s. 794.05, F.S., prohibiting unlawful sexual activity with certain minors.

Expansion of Age Range for Removal from Registration Requirement

The bill amends the age requirements for persons who are convicted of certain sex offenses to petition for removal from the requirement to register if their conviction was the result of consensual sexual activity. Section 943.04354, F.S., currently provides that an offender can petition for removal if: (1) he or she is no more than four years older than the victim; and (2) the victim was at least 14 years old, but not more than 17 years old, at the time of the offense. The bill maintains the four-year age difference limitation, but amends the statute to permit a petition for relief if the victim was at least 13 years old but not more than 18 years old. This expansion of the victim's age range includes the ages of most high school and junior high students.

Search of Dru Sjodin National Sex Offender Public Website

Section 943.04351, F.S., currently requires state agencies and governmental subdivisions to search FDLE's sexual predator and sexual offender information before allowing a person to work or volunteer at a park, playground, day care center, or other place where children regularly congregate. This requirement can be satisfied by using FDLE's Internet site. Section 3 of the bill adds a requirement to search the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice. A search of this website is already required by s. 435.05, F.S., as part of any required Level 1 background screening for employment, and by s. 943.04352, F.S., prior to placement of an offender on misdemeanor probation.

Risk Assessment

Chapter 947, F.S., requires the Parole Commission to consider the results of a risk assessment in setting the terms and conditions of conditional release and certain other forms of release for a sexual offender or a sexual predator. The definition of the term "risk assessment" in s. 947.005, F.S., states that the purpose of a risk assessment is to evaluate the level of risk when a sex offender has contact with a child. The definition also provides that the risk assessment must be completed by an "independent qualified practitioner." The bill amends the definition to remove the term "independent." This will make the definition the same as the definition of risk assessment in s. 948.001, F.S., relating to risk assessment for sexual offenders and sexual predators under community supervision. It appears that the change would allow the risk assessment to be conducted by a practitioner who is treating the offender, the child, or another person with an interest in the case.

Sexual Predators and Sexual Offenders on Community Supervision

The bill amends s. 948.31, F.S., which requires a sentencing court to order an evaluation by a qualified practitioner of whether treatment is required for a sexual predator or a sexual offender who is being placed on probation or community control. It provides that conditions imposed in accordance with the statute are standard conditions of probation and do not have to be orally pronounced at the time of sentencing. This would appear to apply to the initial requirement for an evaluation, since other requirements depend upon the judge's decision as to whether the evaluation indicates a need for treatment. If the judge decides to require treatment, it would also apply to the requirement that such treatment be obtained from a qualified practitioner who is not disqualified by criteria in the statute.

Section 948.31, F.S., is also amended to remove the requirement that the court restrict the offender from having contact with minors if treatment is recommended. Section 948.30(1)(e), F.S., already restricts contact between persons on community supervision who have been convicted of certain sexual offenses and minors.

Severability Clause

The bill contains a severability clause providing that a finding that any portion of the bill is invalid will not affect the validity of any other portion of the bill.

Effective Date

The bill provides that it will take effect upon becoming a law. In its analysis of the bill, FDLE requested that the date be changed to April 30, 2012, to allow time for FDLE to meet the requirements of the bill's enhancements to the statutes.²¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There appears to be no private sector fiscal impact.

C. Government Sector Impact:

The FDLE reports that changes to the sexual offender/sexual predator reporting requirements in the committee substitute for the bill will require a non-recurring expenditure of \$50,450.²²

²¹ Fla. Dep't of Law Enforcement, revised analysis of SB 1890 (April 1, 2011), pg. 5 note 5 (on file with the Senate Committee on Judiciary).

²² *Id.* at 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 12, 2011:

- Deletes the section that would have created an offense of sexting.
- Requires sexual predators and sexual offenders to report “all” Internet identifiers rather than “any” Internet identifier wherever such reference is made in the bill.
- Provides that voluntary use of a birth date, social security number, or PIN as an Internet identifier constitutes a waiver of the right of non-disclosure of such information.
- Requires sexual predators and sexual offenders to provide information relating to a passport, and requiring those who are aliens to provide information documenting their immigration status.
- Expands the definition of sexual offender to include an adult who is convicted of incest if the victim was a minor.
- Requires state agencies and governmental subdivisions to check the Dru Sjodin National Sex Offender Public Website before allowing a person to work or volunteer at a park, playground, day care center, or other place where children regularly congregate.
- Allows a sexual predator or a sexual offender who is not more than four years older than his or her victim to petition to be relieved from the requirement to register if his or her victim was 13-18 years old, rather than the current 14-17 years old.
- Amends s. 948.31, F.S., to specify that the current requirement for sexual predators and sexual offenders who are placed on probation or community control to have an evaluation as to the need for treatment is a standard condition of probation that does not have to be orally pronounced at the time of sentencing. Also removes the requirement for the court to restrict sexual predators and sexual offenders from having contact with minors if treatment is recommended.

- B. **Amendments:**

Barcode 412196 by Judiciary on April 25, 2011:

- Adds the requirement, found elsewhere in the committee substitute, that a sexual predator disclose passport information and immigration status, to various other sections of the bill;
- Creates a new section of Florida Statutes that prohibits a minor’s intentional or knowing use of an electronic communication device to transmit, distribute, or

display a visual depiction of himself or herself that depicts nudity and is harmful to minors, and prohibits a minor's knowing or intentional possession of the same;

- Revises the eligibility requirements for removal of the requirement to register as a sexual offender;
- Changes the effective date of the bill to April 20, 2012; and
- Makes conforming and technical changes. (WITH TITLE AMENDMENT)

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