

**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 Criminal Justice Committee

BILL: SB 1800

INTRODUCER: Senator Altman

SUBJECT: Criminal Offenders

DATE: February 7, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	TR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Major features of the bill include the following:

- Modifies various registration, reregistration, and reporting provisions relevant to sexual predators and sexual offenders to:
  - Add the offense of incest where the victim is a minor and the defendant is 18 years of age or older to definitions of “sexual offender” that qualify a person as a sexual offender.
  - Require that Internet identifiers, passport information, and immigration status information be provided, produced, or reported.
  - Require a sexual predator or sexual offender to register all Internet identifiers with the FDLE before using them.
  - Require a sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles (DHSMV) to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change.
  - Require a sexual predator or sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 7 days or more is outside of the United States.
  - Modify various penalty sections to punish a sexual predator or sexual offender who fails to report that he or she remains in Florida after reporting an intent to leave Florida or who fails to provide required Internet identifier information.
- Requires a state agency or governmental subdivision, before making any decision to appoint or employ a person to work or volunteer at a place where children regularly congregate, to

conduct a national search through the Dru Sjodin National Sex Offender Public Website maintained by the U.S. Department of Justice.

- Modifies current qualifying criteria and procedures relevant to proceedings to remove the requirement to register as a sexual predator or sexual offender, including, but not limited to, the age requirement relevant to the victim of the qualifying offense.
- Requires electronic monitoring for a person who is subject to conditional release for a crime that was committed on or after July 1, 2012, and who has been convicted at any time of any offense in another jurisdiction similar to a sexual offense specified in the statute.
- Requires the court to order, in addition to any other provisions under s. 948.30, F.S., mandatory electronic monitoring for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who meets either criterion:
  - The probationer or community controllee received a designation in another jurisdiction similar to Florida's sexual predator designation.
  - The probationer or community controllee has previously been convicted of an offense in another jurisdiction similar to a sexual offense specified in the statute and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.
- Requires the court to order electronic monitoring for a probationer or community controllee whose crime was committed on or after July 1, 2012, and who meets either criterion:
  - The probationer or community controllee is placed on probation or community control for any specified sexual offense.
  - The probationer or community controllee has previously been convicted of any specified sexual offense or a similar offense in another jurisdiction.
- Requires the court to impose terms and conditions specified in s. 948.31(1) and (2), F.S., upon a probationer or community controllee whose crime was committed on or after July 1, 2012, and who is placed on probation or community control for a specified sexual offense.
- Requires the court to order an evaluation by a qualified practitioner to determine the need of the probationer or community controllee for sex offender treatment while on probation or community control.
- Requires a community controllee or probationer subject to treatment to actively participate in and successfully complete any recommended treatment.
- Requires the court to order the community controllee or probationer to comply with the treatment program rules, which can include, but are not limited to, a safety plan and polygraph examinations for treatment purposes.
- Authorizes the court, when it is recommended by a qualified practitioner or the supervising probation officer, to restrict the probationer or community controllee from having unsupervised contact with a minor or prohibit him or her from residing with a minor.
- Provides that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S. (state uniform traffic control), is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

This bill substantially amends sections 775.21, 903.046, 943.0435, 943.04351, 943.04354, 943.0437, 944.606, 944.607, 947.005, 947.1405, 948.012, 948.039, 948.30, 948.31, 985.481, and 985.4815, Florida Statutes.

## II. Present Situation:

### Registration of Sexual Predators and Sexual Offenders: General Information

Florida requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders, span several different chapters and numerous statutes, and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Family Services (DCF).<sup>1</sup>

A person who meets sexual predator qualifying criteria is designated by a court as a sexual predator. A person who meets sexual offender qualifying criteria is classified as a sexual offender (no court designation). Aside from sexual predator qualifying criteria, there are a few other provisions that apply only to sexual predators, such as the prohibition against working or volunteering at places where children regularly congregate.

Requirements for in-person registration and reregistration (discussed below) are similar for sexual predators and sexual offenders but frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, i.e., the sexual predator or sexual offender is in the DOC's control or custody or under its supervision; is in residential commitment under the DJJ or under DJJ's supervision; or is in civil commitment under the DCF as a sexually violent predator. These agencies are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

Certain information on sexual predators and sexual offenders is a public record and there are various provisions authorizing or requiring public or community notification of this information. The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.<sup>2</sup> Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry maintained by the FDLE.

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<sup>1</sup> The FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration.

<sup>2</sup> "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us/offender/homepage.do?jsessionid=Z57sCH6qxtkuph8ZJOqpXg> (last visited on February 7, 2012).

## SORNA

The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),<sup>3</sup> attempts to make all states' laws uniform with respect to requirements (or "minimum" standards) that Congress has judged to be necessary to be included in states' laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.<sup>4</sup> While states are free to choose not to substantially implement SORNA, the AWA provides for sanctioning noncomplying states through a partial reduction in Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented<sup>5</sup> SORNA.<sup>6</sup> Florida was the third state to do so.<sup>7</sup>

### Registration and Reregistration Requirements

At the FDLE's website,<sup>8</sup> the following information is provided to sexual predators and sexual offenders regarding registration, reregistration, and other requirements:

- A sexual predator or sexual offender must report in person to the local sheriff's office to register his or her temporary, transient, or permanent address and other information specified in statute within 48 hours of establishing or maintaining a residence in Florida; within 48 hours of release from custody and/or supervision of the DOC, DCF, or DJJ; or in the county of conviction, within 48 hours of conviction if not under custody and/or supervision of the DOC.
- At initial registration, a sexual predator or sexual offender must provide the following information to the FDLE: name; date of birth; social security number; race; sex; height; weight; hair and eye color; photograph; home telephone number and any cellular telephone number; any electronic mail address and any instant message name (as required by statute); address of legal residence; address of any current temporary residence, or if no permanent or temporary residence, any transient residence within Florida; dates of any current or known future temporary residence within Florida or out of state; occupation and place of employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed.
- Within 48 hours after the initial report required (as previously stated), a sexual predator or sexual offender must report in person to the driver license office of the DHSMV and provide

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<sup>3</sup> P.L. 109-248 (July 27, 2006).

<sup>4</sup> "Dru Sjodin National Sex Offender Public Website," <http://www.nsopw.gov/Core/Portal.aspx> (last visited on February 7, 2012).

<sup>5</sup> This standard is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the DOJ's guidelines on SORNA. It does not mean that the jurisdiction has necessarily followed SORNA or the DOJ's guidelines on SORNA in all respects.

<sup>6</sup> "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, [http://www.ojp.usdoj.gov/smart/newsroom/jurisdictions\\_sorna.htm](http://www.ojp.usdoj.gov/smart/newsroom/jurisdictions_sorna.htm) (last visited on February 6, 2012).

<sup>7</sup> "Governor Crist Announces Florida's Implementation of the Adam Walsh Act" (May 18, 2010), Florida Department of Law Enforcement, <https://www.fdle.state.fl.us/Content/News/May-2010/Governor-Crist-Announces-Florida%e2%80%99s-Implementation-.aspx> (last visited on February 6, 2012).

<sup>8</sup> "Important Information," Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us/offender/Important.jsp#General> (last visited on February 6, 2012), discussing provisions of ss. 775.21 and 943.0435, F.S.

proof of initial registration as a sexual predator or sexual offender to secure or renew a valid Florida driver license or identification card displaying one of the following designations: “775.21, F.S.” or “943.0435, F.S.,” unless a driver license or identification card with such designation was previously secured or updated. A sexual offender must also submit to the taking of a photograph for use by the FDLE in maintaining current records of sexual offenders.

- Each time the driver license or identification card is subject to renewal, or within 48 hours after any change in permanent, temporary, or transient residence or change in name made by marriage or other legal process, a sexual predator or sexual offender must report in person to a driver license office to update the driver license or identification card and ensure that it displays the designations (as previously identified).
- If enrolled, employed, or carrying on a vocation at a Florida institution of higher education, a sexual predator or sexual offender must provide the name, address, and county of each institution, including each campus, enrollment, or employment status, and each change in enrollment or employment status (i.e. commencement or termination) in person at the sheriff’s office. If a sexual offender is supervised by the DOC or the DJJ, this information must be reported to the sexual offender’s probation office, within 48 hours after any change in status.
- A sexual predator or sexual offender must report any electronic mail address or instant message name, prior to using the address or name, during registration/reregistration or by providing all updates through the online system maintained by the FDLE.
- If a sexual predator or sexual offender vacates a permanent, temporary, or transient residence and does not have another permanent, temporary, or transient residence, he or she must report in person to the sheriff’s office in the county where he or she is located within 48 hours. If a sexual predator or sexual offender reports that he or she has vacated a permanent, temporary, or transient residence and then remains at that residence, he or she must report in person to the sheriff’s office where he or she reported vacating the residence. Failure to report this information is a second degree felony. The address will be verified by county, state, or local law enforcement agencies.
- If a sexual predator or sexual offender intends on establishing a permanent, temporary, or transient residence in another state or in a jurisdiction other than Florida, he or she must report in person to the sheriff’s office of the county of current residence within 48 hours before the date that he or she intends to leave Florida to establish residence in another state or jurisdiction. If the sexual predator or sexual offender reporting this information later decides to remain in Florida, he or she must report in person to the sheriff’s office to which he or she reported the intention of leaving Florida within 48 hours after the intended departure date. Failure to report this information is a second degree felony.
- A sexual predator or sexual offender must report in person either twice a year (during the birth month and during the sixth month following the birth month) or four times a year (once during the birth month and every third month thereafter), depending upon his or her offense/designation, to the sheriff’s office in the county in which he or she resides or is otherwise located to reregister. All sexual predators and sexual offenders convicted for offenses specified in s. 943.0435(14), F.S., and juvenile sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S., are required to reregister four times a year. All other sexual offenders are required to reregister twice a year.

- If a sexual predator or sexual offender lives in another state but works or attends school in Florida, he or she must register the work or school address as a temporary address within 48 hours by reporting in person to the local sheriff's office.
- A sexual predator or sexual offender must respond to any address verification correspondence from the FDLE within three weeks of the date of the correspondence.
- If employed, carrying on a vocation, a student, or becoming a resident of another state, a sexual predator or sexual offender may have a requirement to register under the laws of that state.
- A sexual predator or sexual offender must maintain registration for the duration of his or her life.<sup>9</sup>

### **Reporting of Information Regarding Sexual Predators and Sexual Offenders**

Section 944.606, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is being released after serving a period of incarceration. Similarly, agency reporting requirements exists in other statutes:

- Section 944.607, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.
- Section 985.481, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender released from residential commitment under the DJJ.
- Section 985.4815, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender under DJJ supervision but who is not committed.

### **Public Registry Searches Prior to Appointment or Employment of Certain Government Employees**

Section 943.04351, F.S., provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S. The agency or governmental subdivision may conduct the search using the Internet site maintained by the FDLE. Section 943.04351, F.S., does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

### **Providing Information to Commercial Social Networking Websites**

Section 943.0437, F.S., provides that the FDLE may provide information relating to electronic mail addresses and instant message names maintained as part of the sexual offender registry to commercial social networking websites<sup>10</sup> or third parties designated by commercial social

<sup>9</sup> This is the general rule. Exceptions exist in ss. 775.21, 943.0435, and 943.04354, F.S.

<sup>10</sup> The term "commercial social networking website" is defined in the statute as a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other

networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by the FDLE.

Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action that meets either criterion:

- The action was voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.
- The action was taken to restrict access by such registered user to the commercial social networking website.

### **Removal of Registration Requirement**

Section 943.04354, F.S.,<sup>11</sup> provides for the removal of the requirement to register as a sexual predator or sexual offender if a court finds that *all* criteria are met and grants a motion or petition for removal of the registration requirement. A person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

- Was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., or the person committed a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., for which adjudication of guilt 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., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S.
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation.
- Is not more than 4 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.

A person who meets all of these criteria can move the court for removal of the registration requirement if the qualifying violation was committed on or after July 1, 2007. The motion is made in the court that will sentence or dispose of the qualifying violation. The person must allege in the motion that he or she meets all of the criteria and that removal of the registration requirement will not conflict with federal law.<sup>12</sup> The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of the qualifying violation

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users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

<sup>11</sup> This statute is sometimes referred to as the “Romeo and Juliet” statute or law.

<sup>12</sup> Of relevance to s. 943.04354, F.S., SORNA does not require registration “[w]here both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act,” though “jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct.” “SORNA,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, <http://www.ojp.usdoj.gov/smart/sorna.htm#consensualconduct> (last visited on February 8, 2012).

and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of the qualifying violation, the court must rule on this motion and, if the court determines the person meets the 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 for removal of the registration requirement.

A person who meets all of the criteria but does not qualify to seek relief by motion can seek relief by petition in the court in which the sentence or disposition for the qualifying violation occurred. All of the previously described requirements for the motion and the disposition of the motion apply to the petition and disposition of petition. If the court denies the petition, the person is not authorized under s. 943.04354, F.S., to file any further petition for removal of the registration requirement.

If a person provides to the FDLE a certified copy of the court's order removing the requirement that the person register as a sexual offender or sexual predator, the registration requirement will not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE. However, the removal of this information from the public registry does not mean that the public is denied access to information about the person's criminal history or record that is otherwise available as a public record.

### **Purpose of and Criteria for Bail Determination**

Article I, Section 14, of the Florida Constitution, provides: "Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained."

Section 903.046, F.S., sets forth the purpose of a bail determination. It also provides considerations which the court is required to consider when determining whether to release a defendant on bail or other conditions, and what the bail or those conditions may be. For example, the court must consider the nature and circumstances of the offense charged. The bill includes a new consideration, which bears some similarity to the consideration in s. 903.46(2)(1), F.S.:

Whether the crime charged is a violation of chapter 874 or alleged to be subject to enhanced punishment under chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

### **Conditional Release Program**

The Conditional Release Program is under the administration of the Florida Parole Commission (Commission). The Commission states: “This program requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender or sexual predator. Unlike parole, conditional release is not a discretionary release. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the Commission and this supervision can be revoked and the releasee returned to prison if the Commission determines that a violation of supervision has occurred.”

Section 947.1405, F.S., which is the Conditional Release Program Act, in part, requires the Commission to impose certain conditions upon conditional releasees who have committed (on or after a specified date) a specified offense and meet other statutory criteria.

### **Split Sentence of Probation or Community Control and Imprisonment**

Section 948.012, F.S., provides, in part, that whenever punishment by imprisonment for a misdemeanor or noncapital felony is prescribed, the court at time of sentencing may impose a split sentence whereby the defendant is to be placed on probation or, with respect to a noncapital felony, into community control upon completion of any specified period of such sentence which may include a term of years or less. In such case, the court must stay and withhold the imposition of the remainder of sentence imposed upon the defendant and direct that the defendant be placed on probation or community control after serving such period as may be imposed by the court. The period of probation or community control commences immediately upon the release of the defendant from imprisonment, whether by parole or gain-time allowance.

### **Special Terms and Conditions of Probation or Community Control Imposed by Court Order**

Section 948.039, F.S., provides, in part, that the court may determine any special terms and conditions of probation or community control. The terms and conditions should be reasonably related to the circumstances of the offense committed and appropriate for the offender. The court must impose the special terms and conditions by oral pronouncement at sentencing and include the terms and conditions in the written sentencing order.

### **Additional Terms and Conditions of Probation or Community Control for Certain Sexual Offenses**

Section 948.30, F.S., sets forth terms and conditions that a court must impose on probationers or community controlees who have committed (on or after a specified date) a specified sexual offense. The statute, in part, requires the court to order, in addition to any other provision of the statute, mandatory electronic monitoring as a condition of the probation or community control for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who meets any of the following criteria:

- The probationer or community controllee was placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.
- The probationer or community controllee is designated a sexual predator pursuant to s. 775.21, F.S.
- The probationer or community controllee has previously been convicted of any of the offenses previously described and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

### **Evaluation and Treatment of Sexual Predators and Sexual Offenders on Probation or Community Control**

Section 948.31, F.S., provides that the court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need for the treatment is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21, F.S., or sexual offender under s. 943.0435, F.S., s. 944.606, F.S., or s. 944.607, F.S. The treatment must be obtained from a qualified practitioner as defined in s. 948.001, F.S. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I), F.S. The court must impose a restriction against contact with minors if sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee must be provided to the court for review.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 775.21, F.S., relating to sexual predator registration, to:

- Require a sexual predator to provide or produce at registration and reregistration the following information and changes to that information:
  - All “Internet identifiers”<sup>13</sup> (current references to instant message names in various registration statutes are removed). A sexual predator is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual predators may securely access and update all Internet identifier information.
  - Information about a passport, if the sexual predator has a passport.
  - Information about documents establishing the sexual predator’s immigration status, if the sexual predator is an alien.
- Require a sexual predator who is unable to secure or update a driver license or identification card with the DHSMV to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change to the sheriff’s office of the

<sup>13</sup> The bill defines “Internet identifier” as all electronic mail, chat, instant messenger, social networking, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). However, voluntary disclosure of the exempted information waives this exemption.

county in which the sexual predator resides or is located and provide confirmation that he or she has reported the change to the DHSMV.

- Require a sexual predator who is released from custody in a homeless or transient status to report in person to the sheriff's office in the county in which he or she is located within 24 hours.
- Require a sexual predator who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 7 days or more is outside of the United States, and to provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual predator's intended residence. A sexual predator who indicates his or her intent to establish a residence in another country and who later decides to remain in Florida must, within 48 hours after the date upon which the sexual predator indicated he or she would leave Florida, report in person to the sheriff to which the sexual predator reported the intended change of residence and report his or her intent to remain in Florida.
- Amend two penalty sections to provide that:
  - It is a second degree felony for a sexual predator who reports his or her intent to establish a residence in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 775.21, F.S.
  - It is a third degree felony to fail to provide required Internet identifier information.

**Section 2** amends s. 943.435, F.S., relating to sexual offender registration, to:

- Add the offense of incest where the victim is a minor and the defendant is 18 years of age or older to the definition of "sexual offender" pertinent to s. 943.0435, F.S.
- Require a sexual offender to provide or produce at registration and reregistration the following information and changes to that information:
  - All Internet identifiers. A sexual offender is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual offenders may securely access and update all Internet identifier information.
  - Information about a passport, if the sexual offender has a passport.
  - Information about documents establishing the sexual offender's immigration status, if the sexual predator is an alien.
- Require a sexual offender who is unable to secure or update a driver license or identification card with the DHSMV to report any change in the sexual offender's residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office of the county in which the sexual offender resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual offender to report to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 7 days or more is outside of the United States, and to provide to the sheriff the address and country of intended residence. The notification must include the address and country of intended residence. The sheriff must provide to the FDLE the information received from the sexual offender. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual offender's intended residence.

A sexual offender who indicates his or her intent to establish a residence in another country and later decides to remain in Florida must, within 48 hours after the date upon which the sexual offender indicated he or she would leave Florida, report in person to the sheriff to which the sexual offender reported the intended change of residence, and report his or her intent to remain in Florida.

- Amend two penalty sections to provide that:
  - It is a second degree felony for a sexual offender who reports his or her intent to establish a residence in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 943.0435, F.S.
  - It is a third degree felony to fail to provide required Internet identifier information.

**Section 3** amends s. 943.04351, F.S., regarding required searches of sexual predator and sexual offender registration information, to provide that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a national search through the Dru Sjodin National Sex Offender Public Website maintained by the DOJ.

**Section 4** amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances, to amend criteria for qualifying for consideration for removal of the registration requirement to:

- Provide that the victim of the qualifying offense must not have been less than 13 years of age and not more than 18 years of age at the time of the offense.
- Remove the current requirement that a person's relevant offense must be committed on or after July 1, 2007, in order to move for removal of the registration requirements.

**Section 5** amends s. 943.0437, F.S., relating to commercial social networking websites, to authorize the FDLE to provide information relating to Internet identifiers maintained as part of the sexual offender registry to commercial social networking sites or their designated third parties. A commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the website against the list of Internet identifiers provided by the FDLE. Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an Internet identifier contained in the sexual offender registry.

**Section 6** amends s. 944.606, F.S., relating to notification upon release of sexual offenders, to:

- Add the offense of incest where the victim is a minor and the defendant is 18 years of age or older to the definition of "sexual offender" pertinent to s. 944.606, F.S.
- Require the DOC to provide the following information to the FDLE about a sexual offender who is released from imprisonment:
  - All Internet identifiers.
  - Information about a passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.

**Section 7** amends s. 944.607, F.S., relating to notification to the FDLE of information on sexual offenders, to:

- Add the offense of incest where the victim is a minor and the defendant is 18 years of age or older to the definition of “sexual offender” pertinent to s. 944.607, F.S.
- Require a sexual offender who is under the supervision of the DOC but is not incarcerated to provide or produce at registration and reregistration the following information and changes to that information:
  - All Internet identifiers.
  - Information about a passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
- Amend a penalty provision to provide that it is a third degree felony to fail to report all Internet identifier information.

**Section 8** amends s. 947.005, F.S., the definitions section of ch. 947, F.S., relating to the Parole Commission, to modify the definition of “risk assessment” to mean an assessment completed by a qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child (the current definition indicates the practitioner must be an “*independent* qualified practitioner”).

**Section 9** amends s. 947.1405, F.S., relating to the conditional release program, to provide that, in addition to all conditions imposed, for an offender who is subject to conditional release for a crime that was committed on or after July 1, 2012, and who has been convicted at any time of a violation of s. 800.04(7)(b), F.S. (lewd or lascivious exhibition by an adult) or s. 847.0135, F.S. (electronically soliciting a minor for unlawful sexual conduct and other prohibited acts), or a similar offense in another jurisdiction, the Parole Commission must order electronic monitoring for the duration of the releasee’s supervision.

**Section 10** amends s. 948.30, F.S., relating to additional terms and conditions of probation and community control for certain sex offenses, to:

- Require the court to order mandatory electronic monitoring for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who meets either criterion:
  - The probationer or community controllee received a designation in another jurisdiction similar to the sexual predator designation under s. 775.21, F.S.
  - The probationer or community controllee has previously been convicted of an offense in another jurisdiction similar to a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.01, F.S., or s. 847.0145, F.S. and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.
- Require the court to order mandatory electronic monitoring for a probationer or community controllee whose crime was committed on or after July 1, 2012, and who is placed on probation or community control for a violation of s. 800.04(7)(b), F.S., or s. 847.0135, F.S., or has previously been convicted of a violation of s. 800.04(7)(b), F.S., or s. 847.0135, F.S., or a similar offense in another jurisdiction.

- Require the court to impose terms and conditions specified in s. 948.31(1) and (2), F.S., upon a probationer or community controllee whose crime was committed on or after July 1, 2012, and who is placed on probation or community control for a violation of s. 847.0135(3) or (4), F.S. (electronically soliciting a minor for unlawful sexual conduct, traveling to meet a minor for engaging in sexual conduct after electronic solicitation, and other prohibited acts).

**Section 11** amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation and community control, to:

- Remove from the statute language that:
  - Requires the court to order an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment.
  - Provides that if the court determines that there is a need for treatment, the court shall require sexual offender treatment as a term of condition of probation or community control for any person required to register as a sexual predator or sexual offender.
  - Requires that such treatment be obtained from a qualified practitioner as defined in s. 948.001, F.S.
  - Requires the court to impose a restriction against contact with minors if sexual offender treatment is recommended.
  - Requires that the evaluation and recommendations for treatment of the probationer or community controllee be provided to the court for review.
- Provide that conditions imposed pursuant to s. 948.31, F.S., do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in the statute.
- Require the court to order an evaluation by a qualified practitioner to determine the need of the probationer or community controllee for sex offender treatment while on probation or community control. The evaluation and recommendations for any treatment of the probationer or community controllee shall be provided to the court for review.
- Provide that if the court determines that a need for treatment is established by the evaluation process, the treatment must be obtained from a qualified practitioner. The community controllee or probationer must actively participate in and successfully complete any recommended treatment. The court shall also require the community controllee or probationer to comply with the treatment program rules, which can include, but are not limited to, a safety plan and polygraph examinations for treatment purposes.
- Authorize the court, when it is recommended by a qualified practitioner or the supervising probation officer, to restrict the probationer or community controllee from having unsupervised contact with a minor or prohibit him or her from residing with a minor.

**Section 12** amends s. 985.481, F.S., relating to registration of sexual offenders adjudicated delinquent of certain offenses and DJJ notification of release, to require the DJJ to provide to the FDLE the following information about any sexual offender who is being released after serving a period of residential commitment under the DJJ:

- Information about a passport, if the sexual offender has a passport.
- Information about documents establishing immigration status, if the sexual offender is an alien.

**Section 13** amends s. 985.4815, F.S., relating to notification to the FDLE of information on juvenile sex offenders, to:

- Require a sexual offender under the supervision of the DJJ but who is not committed with the DJJ to provide or produce at registration and reregistration the following information and changes to that information:
  - Passport information, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
- Require the DJJ to provide to the FDLE the previously described information regarding a “sexual offender,” as defined in the statute.

**Section 14** amends s. 903.046, F.S., relating to the purpose of and criteria for bail determination to provide that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S. (state uniform traffic control), is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

**Section 15** amends s. 948.012, F.S., relating to a split sentence of probation or community control. Currently, the statute provides that the period of probation or community control of a split sentence commences immediately upon release of the defendant from incarceration, “whether by parole or gain-time allowance.” The words “whether by parole or gain-time allowance” are removed.

**Section 16** amends s. 948.039, F.S., relating to special conditions of probation or community control imposed by court order, to provide that the probation or community control period commences immediately upon the release of the offender from incarceration.

**Section 17** provides that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

**Section 18** provides that, except as otherwise expressly provided in the bill and except for this section, which takes effect upon becoming law, the effective date of the bill is April 30, 2013. (Section 14 takes effect on July 1, 2012.)

#### **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:**

Section 10 of the bill, in part, requires the court to order, in addition to any other provisions of s. 948.30, F.S., mandatory electronic monitoring for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who meets either criterion:

- The probationer or community controllee has received a designation in another jurisdiction similar to Florida's sexual predator designation.
- The probationer or community controllee has previously been convicted of an offense in another jurisdiction similar to a sexual offense specified in the statute and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

Applying a condition of probation or community control to a crime that occurred prior to the creation of the condition may be challenged as an unconstitutional ex post facto violation. For example, the First District Court of Appeal construed a statutorily-required cost or surcharge to be a condition of probation and found that this condition was applied retroactively to the appellant (the appellant's conviction occurred before the effective date of the authorizing statute).<sup>14</sup> The court held that "[e]x post facto principles are implicated where a statute is applied retroactively to impose a cost or surcharge and the length of the defendant's sentence can be increased by the failure to pay."<sup>15</sup>

The bill contains a severability clause.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

<sup>14</sup> *Massengale v. State*, 69 So.3d 1095 (Fla. 1st DCA 2011).

<sup>15</sup> *Id.* at 1096. Article I, Section 10, of the Florida Constitution, in part, prohibits the passage of ex post facto laws. It is possible that the application scenario previously discussed could also be challenged as violating Article X, Section 9, of the Florida Constitution, which provides that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed."

### C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have an insignificant prison bed impact.

The Florida Parole Commission states: “The Department of Corrections provides supervision for offenders placed on conditional release by the Parole Commission and any fiscal impact for the added cost of electronic monitoring for these releasees would be borne by the releasee and the Department. The bill would have no fiscal impact on the Parole Commission’s operations.”<sup>16</sup>

The DOC states that the bill “would require various form and procedure changes in addition to programming of the Department’s offender based information system; however, such changes are not significant.”<sup>17</sup>

The FDLE estimates it will incur a \$57,050 impact (non-recurring expenditures) because of programming and continued on-going support and maintenance. Current contract staff have the knowledge to complete this project; however, the FDLE will have to contract for additional hours. The FDLE states that, while the impact of the bill does not necessitate additional resources (the impact of the bill will be handled within the FDLE’s existing resources), the impact of the bill in combination with the impact of additional bills requiring programming enhancements to the sexual predator and sexual offender registration and notification system could rise to the level at which additional resources are required.<sup>18</sup>

### VI. Technical Deficiencies:

The following are suggested changes to the bill provided by the FDLE that appear to be addressing technical issues:

- Amend line 230 to change “24 hours” to “48 hours.” The FDLE states that this suggested change would be consistent with the many reporting requirements for sexual offenders and predators where registration information must be reported within “48 hours” of a change (i.e. address, name, address change to another state or jurisdiction) pursuant to ss. 943.0435 and 775.21, F.S., and to avoid confusion for law enforcement attempting to enforce the registration laws and sexual predators attempting to comply with those laws.
- Add the language from lines 227-230 (“If the sexual predator [offender] is released from custody in a homeless or transient status, he or she must report in person to the sheriff’s office in the county in which he or she is located within 24 hours”) to s. 943.0435(4)(b), F.S., after line 569.

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<sup>16</sup> Analysis of SB 1800, Florida Parole Commission, dated February 7, 2012 (on file with the Senate Committee on Criminal Justice).

<sup>17</sup> Analysis of SB 1800, Florida Department of Corrections, dated January 18, 2012 (on file with the Senate Committee on Criminal Justice).

<sup>18</sup> Analysis of SB 1800, Florida Department of Law Enforcement, dated January 26, 2012 (on file with the Senate Committee on Criminal Justice).

- Define the term “custody” on line 227 and remove the new language on lines 227-230 and place this language in a new subsection consistent with s. 943.0435(2)(a), F.S., or s. 775.21(6)(e)1., F.S. The FDLE notes that under current law and practice jail and prison facilities do register offenders and predators being released from their custody regardless of intended residence type. (ss. 775.21(6)(c) and 944.607(7), F.S.). The FDLE states that it is unclear whether custody includes the release from a local jail, federal correctional institution, private correctional institution, DOC prison, or from the supervision of the DOC or DJJ.
- Remove the word “all” from lines 183-184, 328, 330, 486-487, 626, 628-629, 661, 956-957, 959, 990, and 1230. The FDLE states that the language could be interpreted as requiring a sexual predator or sexual offender to only report changes if there is a change to “all” internet identifiers, email addresses, or home phone numbers.
- Amend the new language on lines 262-265 and 583-586 from an intended residence of 7 or more days to 5 or more days in order to be consistent with existing Florida residential language in s. 775.21, F.S., which establishes a residence after “5 or more days.”
- Rephrase lines 262 and 583 to state “to establish residence in another state, a jurisdiction other than the State of Florida, or another country” to clarify that the requirement to report 48 hours prior to travel applies to international travel of less than 7 days duration. The FDLE states that the requirement for a sexual predator or sexual offender to report international travel 21 days prior to departure for a trip or residence of 7 days or more could be interpreted as meaning that international travel of less than 7 days duration is not required to be reported at all. These changes would provide clarification and would be consistent with language proposed elsewhere in the bill.
- Add the proposed requirement for an offender to report international travel 21 days prior to departure for a trip or residence of 7 (or 5) days or more to s. 944.607, F.S. (sexual offenders under DOC supervision) and 985.4815, F.S. (juvenile sexual offenders). The FDLE states that this change would insure all registrants have the same reporting requirements.
- Remove the words “or provide information about” from the requirement to produce a passport on lines 136, 335-336, 507, 633-634, 906-907, 930-931, and 963. The FDLE states that this language is confusing, unclear, and does not necessarily require the offender to produce a passport. The FDLE suggests that the language be written so as to require the offender to present the physical document at least upon initial registration or initial receipt of a passport and then after any subsequent official change to the passport.
- Add the words “prior to use” to lines 365, 661, 990. The FDLE states that this addition would clarify that electronic mail addresses and internet identifiers are required to be provided prior to use. The current language could be interpreted to only require reporting all electronic mail addresses and internet identifiers without specifying when and how they are to be reported.
- Add on lines 1270-1272 and 1277-1280 a requirement for the court to search the Florida Sexual Offender/Predator Public Registry and the Dru Sjodin National Sexual Offender Public Website maintained by the DOJ. The FDLE states that any sexual predator or sexual offender currently listed on the Florida Sexual Offender/Predator Public Registry or the Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) system is identifiable as a sexual predator or sexual offender. However, there may be other persons who qualify for sexual predator or sexual offender registration who are currently unknown to Florida’s registry. It is unclear how the courts should proceed in such circumstances when determining if bail will or will not be granted prior to first appearance.

**VII. Related Issues:**

The FDLE suggests the following changes to the bill (which do not appear to be addressing technical deficiencies per se but address issues related to the bill):

- Add the words “and the court determines that the act was ‘consensual’” to line 704. The FDLE states that this change would clarify the requirements for removal of the registration requirement under s. 943.04354, F.S., are in compliance with SORNA.
- Add the words “all home telephone numbers and cellular telephone numbers” to lines 899, 959, 1161, and 1230. The FDLE states that this change would ensure consistency between the DOC and DJJ statutes in receiving and reporting this information as required by statute.
- Change the effective date of the bill to April 8, 2013, to allow time to complete the system updates successfully.

The bill makes s. 826.04, F.S. (incest) an offense requiring registration under s. s. 943.0435, F.S., for sexual offenders. The FDLE notes that the crime of incest is not typically included in the registration of sexual offenders nor is it an offense for which registration is required according to national guidelines. Incest as a crime in and of itself is not a sexual offense but rather a violation of the legally allowable relationship in marriage or sexual partner, i.e., the crime of incest alone does not indicate that a sexual offense requiring registration (battery, assault, improper contact with a minor, etc.) has occurred.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.