

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 1662

INTRODUCER: Senator Bradley

SUBJECT: Sexual Offenders

DATE: February 29, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 1662 amends numerous provisions of the laws pertaining to registration of sexual predators and sexual offenders. Some of these changes are to more closely align Florida's registry laws with requirements of the federal Sex Offender Registration and Notification Act. Major features of the bill include:

- Requiring sexual predator or sexual offender registration by a parent or guardian convicted of kidnapping, falsely imprisoning, or luring or enticing his or her child if the child is a minor and the offense has a sexual component;
- Clarifying that section 943.0435, Florida Statutes (the "Romeo and Juliet" law), applies only to consensual acts and removing sexual battery as a qualifying offense;
- Clarifying to which court a sexual offender must petition for removal from registration requirements and removing inoperable language regarding calculation of the registration period;
- Including lewd or lascivious battery upon an elderly or disabled person as an offense that requires sexual offenders to register quarterly and for life;
- Amending various definitions relevant to registration of certain information, primarily to address omissions, and providing consistency among relevant statutes regarding registration requirements;
- Expanding the types of information that can be registered or updated through the Florida Department of Law Enforcement's online system;
- Clarifying the appropriate entity to which a sexual predator or sexual offender must report;
- Modifying reporting requirements for international travel;
- Requiring sexual predators and sexual offenders taking online courses at Florida higher education institutions to report such information and for institutions of higher education to be notified of such attendance; and
- Clarifying the obligation to obtain a driver license or identification card.

The bill's changes to registration and reporting requirements, as well as removal of the exception that keeps a parent or guardian of a child who commits certain offenses against the child from being designated as a sexual offender or sexual predator, are expected to result in some increase in convictions and prison sentences for violations of sexual offender and sexual predator registration requirements. However, the Criminal Justice Impact Conference has found that the resulting increase in the need for prison beds cannot be quantified.

The bill has an effective date of October 1, 2016.

## II. Present Situation:

### Overview of Sexual Predator and Sexual Offender Registration

Florida law requires certain persons to register as a sexual predator or sexual offender. In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>1</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>2</sup> Most of these requirements relate to the registration of particular identifying and residence information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state). The agency to which the person reports this information is determined by the person's status or the type of information that has to be reported. For example, if the person is not in the custody of or under the supervision of the Department of Corrections (DOC), Department of Juvenile Justice (DJJ), or Department of Children and Families (DCF) (civilly-confined violent sexual predators), he or she would report, in most circumstances, to the local sheriff's office. An exception would be reporting to the Department of Highway Safety and Motor Vehicles (DHSMV) to obtain or renew a driver license or state identification card (or to update information relevant to the license or card).

Information reported by registered sexual predators and sexual offenders is provided to the Florida Department of Law Enforcement (FDLE) and entered in a statewide database. The registry laws contain a public or community notification component.<sup>3</sup> The FDLE maintains a

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<sup>1</sup> See generally ss. 775.21, 943.0435, 944.607, and 985.4815, F.S. "All sex offenders that are required to register have been convicted of certain qualifying felonies set forth in Florida statutes or have registration requirements in other states.... Some sex offenders are designated by the court as sexual predators because they are deemed to present an extreme threat to public safety as demonstrated through repeated sex offenses, the use of physical violence, or preying on child victims." *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures*, Report No. 15-16, p. 2 (footnote omitted), Office of Program Policy Analysis & Government Accountability, The Florida Legislature. This report is available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1516rpt.pdf> (last visited on February 18, 2016). This report is further referenced in this analysis as "OPPAGA Report."

<sup>2</sup> *Id.* Failure to comply with these requirements is generally a third degree felony. See ss. 775.21, 943.0435, and 985.4815, F.S.

<sup>3</sup> "Local law enforcement agencies are ... required to notify the public of the presence of sexual predators living in their communities. Within 48 hours, law enforcement agencies must notify licensed child care centers and schools within a one-mile radius of the predator's residence." OPAAGA Report. "In addition, local law enforcement agencies, or ... [DOC], if an offender is on community supervision, are also required to notify institutions of higher learning when a sex offender enrolls,

website that makes available to the public some of this information (e.g., identifying information, residence information, and registration-qualifying sexual offense or offenses).<sup>4</sup> Information is also available through a toll-free hotline.

The remainder of this section of the analysis describes these registration requirements and other provisions of the registry laws that are relevant to the bill.

### **Sexual Predator and Sexual Offender Criteria**

Several provisions of the registry laws specify that the following offenses are registration-qualifying offenses: kidnapping (s. 797.01, F.S.); false imprisonment (s. 787.02, F.S.); and luring or enticing a child (s. 787.025(2)(c)), F.S. However, these are registration-qualifying offenses only if the victim is a minor and the defendant is not the victim's parent or guardian.<sup>5</sup> In addition, convictions for these offenses can only be used as a registration-qualifying offense if the court finds that the conviction has a sexual component. As one Florida appellate court has held, the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal where an accused has been convicted of false imprisonment of a child under 13 when committed along with an enumerated sexual offense. However, where an accused is convicted of false imprisonment devoid of a sexual component, such rational basis is lost.<sup>6</sup>

The "parent or guardian" language also appears in s. 856.022, F.S., (loitering or prowling), which prohibits a person convicted of a specified sexual offense from being within 300 feet of a place where children are congregating. Sexual offenses specified in this section include, in part, convictions for kidnapping, false imprisonment, and luring or enticing a child if any of these offenses involved a victim who is a minor and a defendant who is not the victim's parent or guardian. The statute does not apply to a person who has been removed from the requirement to register as a sexual predator or sexual offender.

Section 943.0435(1)(a)1.d., F.S., includes a list of registration-qualifying offenses relevant to certain juvenile offenders. This subparagraph does not include similar offenses committed in Florida which have been redesignated from a former statute number to one of the listed offenses. This appears to be an error because a provision of this type appears in all other provisions of the registry laws relating to registration criteria.

### **Registration and Reregistration**

Sexual predators and sexual offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>7</sup> Sexual predators and sexual offenders who are in the

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is employed, or volunteers at that institution of higher learning, including technical schools, community colleges, and state universities." *Id.*

<sup>4</sup> See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on February 18, 2016).

<sup>5</sup> Sections 775.21(4)(a), 943.0435(1)(a) and (14)(b), and 944.607(1)(a) and (13)(b), F.S. This language is also included in the requirement for notifications the FDLE and/or others are required to make regarding certain sex offenders under s. 944.606(1)(b), F.S.

<sup>6</sup> *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

<sup>7</sup> See ss. 775.21 and 943.0435, F.S.

custody of, or under the supervision of, the DOC or a local jail must register with the DOC and the jail, respectively. During initial registration, the registrant must provide information to the sheriff's office including, in part, his or her name, address, e-mail address, home and cellular telephone number, and Internet identifier. The sheriff's office is then responsible for providing the information to the FDLE for inclusion in the statewide database. Sexual predators and sexual offenders also must reregister at specified intervals and immediately report any changes to registration information.<sup>8</sup>

The interval at which sexual predators and sexual offenders must reregister depends on whether the person is designated as a sexual predator or as a sexual offender and the qualifying offense that was the basis for the designation. Sexual predators and certain sexual offenders must report to reregister in person each year during their birth month and during every third month thereafter to the sheriff's office in the county in which they reside or are otherwise located.<sup>9</sup> Examples of sexual offenders who must register quarterly include sexual offenders who have a conviction for kidnapping or false imprisonment (where the victim is a minor and the offender is not the victim's parent or guardian) or sexual battery.<sup>10</sup> Sexual offenders who do not fall in the quarterly reporting category must report semiannually during their birthday month and during the sixth month thereafter.<sup>11</sup> Reports must be made in person to the sheriff's office in the county in which the registrant resides or is otherwise located.<sup>12</sup>

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

Sexual predators and sexual offenders must register all electronic mail (e-mail) address or Internet identifiers with the FDLE before such addresses or identifiers can be used.<sup>13</sup> Registration must be made either in person or through the FDLE's online system.<sup>14</sup>

The term "Internet identifier" is defined in s. 775.21(2)(i), F.S., to mean all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).<sup>15</sup> According to the FDLE, this definition does not currently include "corresponding website URL or application software associated with the login/username/screen identifier."<sup>16</sup>

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

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<sup>8</sup> *Id.*

<sup>9</sup> Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

<sup>10</sup> Sections 943.0435(14)(b) and 944.607(13)(b), F.S.

<sup>11</sup> Sections 943.0435(14)(a) and 944.607(13)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Sections 775.21(6)(a)1., (6)(e)2., and (6)(g)5. and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

<sup>14</sup> Sections 775.21(6)(g)5. and 943.0435(4)(e), F.S.

<sup>15</sup> Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information. *Id.*

<sup>16</sup> Analysis of SB 1662, Florida Department of Law Enforcement (October 1, 2016) (on file with Senate Committee on Criminal Justice). This document is further referenced in this analysis as "FDLE Analysis."

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

Sexual predators and sexual offenders must register their permanent, temporary, or transient residences both within the state and outside the state.<sup>17</sup> A sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in a state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within:

- 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction; or
- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.<sup>18</sup>

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.<sup>19</sup> The sheriff must promptly provide the FDLE with the information received from the registrant and the FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the registrant's intended residence.<sup>20</sup>

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

Sexual predators and sexual offenders who are enrolled, employed, volunteering, or carrying on a vocation at an institution of high education must provide:

- The name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.<sup>21</sup>

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.<sup>22</sup> The appropriate entity must promptly notify each institution of the sexual predator's or sexual offender's presence and any change in enrollment, volunteer, or employment status.<sup>23</sup>

The term:

- "Institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a "career center, community college, college, state university, or independent postsecondary institution."<sup>24</sup>
- "Change in enrollment or employment status" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the "commencement or termination of enrollment or employment or a change in location of enrollment or employment."<sup>25</sup>

<sup>17</sup> Sections 775.21(6)(a)1. and (i) and 943.0435(2)(b) and (7), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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

<sup>21</sup> Sections 775.21(6)(b), 943.0435(2)(b)2., 944.607(4)(b), and 985.4815(4)(b), F.S.

<sup>22</sup> Section 775.21(6)(b), F.S., provides that the sheriff or the DOC is the appropriate reporting entity. Section 943.0435(2)(b)2., F.S., provides that the sheriff is the appropriate reporting entity. Section 944.607(4)(b), F.S., provides that the DOC is the appropriate reporting agency. Section 985.4815(4)(b), F.S., provides that the DJJ is the appropriate reporting agency.

<sup>23</sup> *Id.*

<sup>24</sup> Sections 775.21(1)(j), 943.0435(1)(d), 944.607(1)(d), and 985.4815(1)(c), F.S.

<sup>25</sup> Sections 775.21(1)(a), 943.0435(1)(e), 944.607(1)(e), and 985.4815(1)(a), F.S.

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

Sexual predators and sexual offenders must provide information about employment and any professional licenses they possess.<sup>26</sup> The term “professional license” is not currently defined in the registry laws.

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

Sexual predators and sexual offenders who are not incarcerated must register in person at a driver license office within 48 hours to obtain a driver license or identification card.<sup>27</sup> Additionally, sexual predators and sexual offenders must report specified information to the Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the registrant’s:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.<sup>28</sup>

The DHSMV must forward to the FDLE and the DOC all photographs and information provided by sexual predators and sexual offenders.<sup>29</sup>

A sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the DHSMV as described must report any change of the residence or change in name by reason of marriage or other legal process within 48 hours after the change to the sheriff’s office in the county where the registrant resides or is located, and provide confirmation that he or she reported such information to the DHSMV.<sup>30</sup>

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

Generally, a sexual offender must maintain registration with the FDLE for the duration of the offender’s life unless he or she has received a full pardon or has had the registration-qualifying conviction set aside in a postconviction proceeding.<sup>31</sup> However, there are other ways in which the registration requirements can be removed.<sup>32</sup>

<sup>26</sup> Sections 775.21(6)(a)1. and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a)1., 985.4815(4)(a) and (13)(b)1., F.S.

<sup>27</sup> Sections 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of the DOC.

<sup>28</sup> *Id.* “Local tax collectors perform driver’s license related functions previously conducted by DHSMV, including processing sex offender identification requests, for 64 of Florida’s 67 counties. The three counties with DHSMV offices are Broward, Miami Dade, and Volusia. When combined, these three counties reflect approximately 40% of all transactions and will remain the responsibility of DHSMV because their tax collectors are appointed, not elected officials.” OPPAGA Report.

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

<sup>30</sup> *Id.*

<sup>31</sup> Sections 775.21(6) and 943.0435(11), F.S.

<sup>32</sup> Sections 775.21(6) and 943.0435(11), F.S.

***Registration Removal under s. 943.0435(11), F.S.***

Section 943.0435(11)(a), F.S., permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition for removal of the requirement to register as a sexual offender. The petition must be filed in the criminal division of the circuit court in the circuit where the conviction or adjudication occurred. The offender is ineligible for removal of the requirement to register if the requirement was based on an adult conviction for a specified offense such as kidnapping, false imprisonment, or sexual battery.<sup>33</sup>

Section 943.0435(11)(a)4., F.S., contains language regarding calculation of the registration period that was included in legislation passed in 2014. The FDLE states that this language was connected to provisions of the original bill that were subsequently removed, and that the language is orphaned and inoperable.<sup>34</sup> Additionally, the language “added some unnecessary ambiguity to the long preexisting language regarding duration of registration requirements and has already allowed at least one offender to gain relief from registration despite not technically qualifying for it.”<sup>35</sup>

***Registration Removal under Section 943.04354, F.S.***

Section 943.04354, F.S., which is sometimes referred to as the “Romeo and Juliet” statute, allows certain minors or young adults who must register as a sexual predator or sexual offender to request removal of registration requirements if the court finds that certain criteria are met. Criteria that must be met include:

- The person was convicted, regardless of adjudication, or adjudicated delinquent of:
  - Sexual battery (s. 794.011, F.S.), a lewd offense (s. 800.04, F.S., F.S.), promoting, etc., sexual performance of a child (s. 827.071, F.S.), or lewd acts transmitted over a computer (s. 847.0135(5), F.S.), or of a similar offense in another jurisdiction if the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of any of these referenced statutes or for a similar offense in another jurisdiction;
  - A violation of any of the statutes referenced above if the person must register as a sexual offender or sexual predator solely on the basis of this conviction or adjudication; or
  - An offense in another jurisdiction which is similar to a violation of any of statutes referenced above and the person no longer meets the criteria for registration as a sexual

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<sup>33</sup> The full list of offenses that exclude an offender from removal of the requirement to register is found in s. 943.0435(11)(a)1., F.S. *See also*, s. 943.0435(11)(a)2., F.S.: “The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief . . .”

<sup>34</sup> FDLE Analysis. The legislation was in ch. 2014-5, L.O.F

<sup>35</sup> E-mail to Senate Criminal Justice staff from FDLE staff (January 28, 2016) (on file with the Senate Committee on Criminal Justice).

offender or sexual predator under the laws of the jurisdiction in which the similar offense occurred; and

- The person is not more than four years older than the victim of the violation, and the victim was 13 years of age or older but younger than 18 years of age at the time the violation was committed.

A person who meets these criteria may seek removal of the requirement to register as a sexual offender or sexual predator in the criminal division of the circuit court for the circuit where the conviction or adjudication for the qualifying offense occurred. The person must:

- Allege in the motion that he or she meets the criteria and that removal of the registration requirement will not “conflict with federal law”; and
- Provide the court with written confirmation that he or she is not required to register in the jurisdiction in which the conviction or adjudication occurred if the offense occurred in a jurisdiction other than Florida.<sup>36</sup>

While Florida is substantially compliant with the requirements of the federal Sex Offender Registration and Notification Act (SORNA),<sup>37</sup> one requirement of the SORNA is not specifically articulated in the registry laws. According to the FDLE, the SORNA requires that the sexual act be “consensual, notwithstanding the age of the victim”<sup>38</sup> and the FDLE interprets the words “conflict with federal law” to mean a conflict with this federal requirement (i.e., a non-consensual sexual act would conflict with the SORNA).<sup>39</sup> The FDLE notes that it “received a recent court order for registration relief based on the R&J statute and further review found that the act was not consensual and attorneys involved in the matter were not aware of the requirements of the federal law.”<sup>40</sup>

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<sup>36</sup> The state attorney and the FDLE must be given notice of the motion at least 21 days before the date of sentencing, disposition of the violation, or hearing on the motion and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. If the court determines the person meets the criteria in subsection (1) and the removal of the registration requirements will not conflict with federal law, it may grant the motion and order the removal of the registration requirements. If the motion is granted, the person must provide the FDLE with a certified copy of the order granting relief. If the motion is denied, the person is not authorized under s. 943.04354, F.S., to file another motion for removal of the registration requirements. *See*, s. 943.04354(2), F.S.

<sup>37</sup> Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). OPPAGA Report.

<sup>38</sup> “SORNA section 111(5)(C) addresses the minimum standards for requiring sex offender registration for consensual sexual conduct under the Adam Walsh Act. SORNA does NOT require registration in the following situations: 1) If both participants are adults, and neither is under the custodial authority of the other (e.g., inmate/prison guard) and the conduct was consensual, then this conduct does not constitute a registerable sex offense for purposes of the Adam Walsh Act. 2) With respect to acts involving at least one minor (person under 18) who engages in consensual sexual conduct, the following minimum standards apply: Where both participants are at least 13 years old and neither participant is more than four years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act. In all situations, jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct.” “Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Final Guidelines” (July 2008), Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, available at [http://ojp.gov/smart/pdfs/faq\\_sorna\\_guidelines.pdf](http://ojp.gov/smart/pdfs/faq_sorna_guidelines.pdf) (last visited on February 18, 2016).

<sup>39</sup> FDLE Analysis.

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



### III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2016, amends numerous provisions of the laws pertaining to registration of sexual predators and sexual offenders. Some of these changes are to more closely align Florida's registry laws with requirements of the federal Sex Offender Registration and Notification Act (SORNA).

#### **Sexual Predator and Sexual Offender Criteria**

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

The bill amends s. 856.022, F.S., relating to loitering or prowling by a person convicted of a sexual offense, to remove the "parent or guardian" language from the enumerated list of offenses in that statute. As a result of these changes, additional persons (qualifying parents or guardians) could be designated as a sexual predator or sexual offender and subject to registration requirements.

The bill amends a list of registration-qualifying offenses relevant to certain juvenile offenders to include any similar offense committed in this state which has been redesignated from a former statute number to one of the listed offenses. This change is consistent with other criteria provisions of the registry laws that include identical language.

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

##### ***Registration Removal under s. 943.0435(11), F.S.***

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

The bill removes from s. 943.0435(11), F.S. (petition for removal of registration requirements), inoperable language regarding calculation of the registration period.

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

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

***Registration Removal under Section 943.04354, F.S.***

The bill amends s. 943.04354(1), F.S., to remove sexual battery (s. 794.011, F.S.) from the list of registration-qualifying offenses for which a person is permitted to seek removal from registration requirements.

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

- Conviction or adjudication for the qualifying offense occurred if registration is required for a conviction that occurred in this state;
- Sexual offender or sexual predator resides if registration is required for a violation of a similar law of another jurisdiction; or
- Sexual offender or sexual predator last resided for a sexual offender or sexual predator who has a conviction for a violation of a similar law of another jurisdiction and who no longer resides in this state.

**Registration and Reregistration**

The bill amends ss. 943.0435 and 944.607, F.S., to provide that a sexual offender who must register as a result of a conviction for lewd or lascivious battery upon an elderly or disabled person (s. 825.1025(2)(a), F.S.), must reregister quarterly and for life. According to the Florida Department of Law Enforcement (FDLE), this change is in accordance with federal SORNA requirements.<sup>41</sup>

**Online Registration and Reregistration**

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

- Home telephone numbers and cellular telephone numbers, including added and deleted numbers;
- Employment information; and
- Status relating to enrollment, volunteering, or employment at institutions of higher education.

Additionally, the bill provides that sexual predators and sexual offenders may continue to register such changes in person. If a sexual predator or sexual offender chooses to register information changes in person, he or she must ensure that the changes are registered with the appropriate entity.<sup>42</sup> The bill further provides that changes in information registered in person or through the online system must be done within 48 hours of the change.

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

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<sup>41</sup> FDLE Analysis.

<sup>42</sup> Applicable entities include the sheriff's office; the Department of Corrections (DOC), if in the custody or control, or under the supervision of the DOC; or the DJJ, if in the custody or control, or under the supervision of the DJJ.

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

The bill amends s. 775.21, F.S., to modify the definition of the term “Internet identifier” to include, but not be limited to:

all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, or personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

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

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

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

**Registration – Location of Residence or Travel**

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

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that sexual predators and sexual offenders must report to the sheriff of the county of current residence at least 21 days before the date of intended travel for international travel, rather than within 21 days of the planned

departure date. Additionally, the bill requires registrants to provide travel information including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel for international travel plans.

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

The bill amends s. 775.21, F.S., to rename the term “change in enrollment or employment status” to “change in status at an institution of higher education,” and to amend the definition to mean “the commencement or termination of enrollment including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education”. The bill also amends the name of the term in ss. 943.0435, 944.607, and 985.4815, F.S., in the same manner and provides that the term has the same meaning as provided in s. 775.21, F.S.

As a result of these changes, sexual predators and sexual offenders who are enrolled in online classes at institutions that meet this definition will now be required to register such information and reregister changes to status. Additionally, appropriate reporting entities will be required to notify institutions of sexual predators and sexual offenders who are enrolled in online classes through their institution.

The bill retains the reporting agencies included in ss. 944.607 and 985.4815, F.S., but amends ss. 775.21 and 943.0435, F.S., to require the sheriff, the DOC, or the DJJ to promptly notify each institution of higher education of a registrant’s presence or change in status.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include information regarding changes in enrollment status as a type of information that sexual predators and sexual offenders must register and reregister.

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

The bill amends s. 775.21, F.S., to define the term “professional license” as “the document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business”. The bill also amends ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to include the term “professional license” and define the term to have the same meaning as in s. 775.21, F.S.

As a result of these changes, sexual predators and sexual offenders who have a professional license that meets the definition will be required to provide information about such license at the time of registration.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include employment information and changes in employment information as information that sexual predators and sexual offenders must register and reregister.

**Registration – Driver License or Identification Card**

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

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that the requirement to report specified information to the Department of Highway Safety and Motor Vehicles (DHSMV) does not negate the requirement to obtain a Florida driver license or identification card.

**Penalties for Failure to Register**

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

The bills amends s. 775.21(10) F.S., to provide that a sexual predator commits a third degree felony if he or she fails to provide employment information or information regarding change in status at an institution of higher education. While it appears the failure to provide employment information or information regarding change in status at an institution of higher education is already punishable under subsection (10) as a failure, by act or omission, to comply with the requirements of s. 775.21, F.S., the inclusion of this information in subsection (10) would clearly indicate that failure to provide this information is a third degree felony.

**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:**

None.

**C. Government Sector Impact:**

Under SB 1662, changes to registration and reporting requirements, as well as removal of the exception that keeps a parent or guardian of a child who commits certain offenses against the child from being designated as a sexual offender or sexual predator, are expected to result in some increase in convictions and prison sentences for violations of sexual offender and sexual predator registration requirements. However, the Criminal Justice Impact Conference has found that the resulting increase in the need for prison beds cannot be quantified.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.55, 775.0862, 775.21, 856.022, 943.0435, 943.04354, 943.0515, 944.606, 944.607, 947.1405, 948.30, 948.31, 985.481, 985.4815, 1012.315, and 1012.467.

This bill reenacts the following sections (or provisions of those sections) of the Florida Statutes: 322.141, 397.4872, 435.07, 775.25, 775.24, 794.056, 921.0022, 938.085, 944.607, 944.608, 948.06, 948.063, and 985.04.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.