

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 699 Internet Identifiers
SPONSOR(S): Criminal Justice Subcommittee, Mariano
TIED BILLS: CS/HB 701 **IDEN./SIM. BILLS:** CS/SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Merlin	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	Welty	Gusky
3) Judiciary Committee	17 Y, 0 N, As CS	Merlin	Camechis

SUMMARY ANALYSIS

Florida law currently requires sexual offenders and sexual predators to register their names, addresses, and other personal information, such as electronic mail addresses and Internet identifiers with the Florida Department of Law Enforcement ("FDLE"), through the local sheriff's office.

The 2016 Legislature passed HB 1333/SB 1662, which included an expanded definition of Internet identifiers in s. 775.21, F.S., and also required the collection of Internet identifiers associated with website or URL or software applications. The amended definition of "Internet identifier" had an effective date of October 1, 2016. However, before the amended definition took effect, a group of plaintiffs in Florida filed a lawsuit against the Commissioner of FDLE in federal court. The court determined:

- The 2016 language regarding Internet identifiers was overbroad and vague and required an individual to either forego protected speech or run the risk of criminal prosecution.
- The injunction did not preclude enforcement of the prior definition of Internet identifier.

The bill amends s. 775.21, F.S., revising the definition of "Internet identifier" and creating a definition for "social Internet communication." The bill requires sexual predators and sexual offenders to register each Internet identifier's corresponding website homepage or application software name with FDLE. The bill also requires sexual predators and sexual offenders to update any changes to the Internet identifier's corresponding website homepage or application software name within 48 hours of using the Internet identifier.

The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predators, Sexual Offenders, Social Networking, and the Internet

Currently, there are more than 3 billion people worldwide that have access to the Internet.¹ As of 2015, nearly two thirds of American adults use social networking sites (“SNS”) such as Facebook and similar sites to exchange information or communicate.² “Roughly eight-in-ten online Americans (79%) now use Facebook, a 7-percentage-point increase from a survey conducted at a similar point in 2015.”³

In the past several years, reports have indicated that sexual offenders and sexual predators use SNS to gain information about victims and make contact with them.⁴ In one study published in 2010 by the University of New Hampshire, researchers noted that there had been 503 arrests involving victims and the use of SNS by offenders. Of that number, an estimated 360 arrests (or 72%) involved the use of SNS to communicate with the victim.⁵ Further, an estimated 346 arrests (or 69%) were made in cases where offenders were using the victim’s SNS to access information about them.⁶

Registration of Sexual Predators and Sexual Offenders: General Information

Florida law 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,⁷ 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 Department of Highway Safety and Motor Vehicles (“DHSMV”), and the Department of Children and Families (“DCF”).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.⁸

A person is classified as a sexual offender if the person:

¹ Jacob Davidson, *Here’s How Many Internet Users There Are*, TIME MAGAZINE, May 26, 2015, available at <http://time.com/money/3896219/internet-users-worldwide/> (last viewed Mar. 3, 2017).

² Andrew Perrin, *Social Media Usage: 2005-2015, 65% of Adults Now Use Social Networking Sites – A Nearly Tenfold Jump in the Past Decade*, Pew Research Center, Oct. 8, 2015, available at <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/> (last viewed Mar. 3, 2017).

³ Shannon Greenwood, Andrew Perrin, and Maeve Duggan, *Social Media Update 2016, Facebook Usage and Engagement is on the Rise, While Adoption of Other Platforms Holds Steady*, Pew Research Center, Nov. 11, 2016, available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/> (last viewed Mar. 3, 2016).

⁴ Byron Acohido, *Sex Predators Target Children Using Social Media*, USA TODAY, Mar. 1, 2011, available at http://usatoday30.usatoday.com/tech/news/2011-02-28-online-pedophiles_N.htm (last viewed Mar. 4, 2017).

⁵ Kimberly J. Mitchell, Ph.D., David Finkelhor, Ph.D., Lisa M. Jones, Ph.D., and Janis Wolak, J.D., *Use of Social Networking Sites in Online Sex Crimes Against Minors: An Examination of National Incidence and Means of Utilization*, Journal of Adolescent Health, Jan. 2010, at 3, available at <http://www.unh.edu/ccrc/pdf/CV174.pdf> (last viewed Mar. 4, 2017).

⁶ *Id.*

⁷ ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

⁸ s. 775.21, F.S. (“The Florida Sexual Predators Act”).

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.^{9, 10}

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ. The DOC and DJJ are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.¹¹ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.¹²

Florida's registry laws meet minimum federal requirements. The federal Sex Offender Registration and Notification Act ("SORNA"), which is Title I of the Adam Walsh Protection and Safety Act of 2006 ("AWA"),¹³ 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' registry laws. The United States Department of Justice ("DOJ") maintains the Dru Sjojin National Sex Offender Public Website.¹⁴ States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.¹⁵ The DOJ has determined that Florida has substantially implemented SORNA.¹⁶ Florida was the third state to do so.¹⁷

⁹ ss. 943.0435 and 985.4815, F.S.

¹⁰ Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections ("DOC"), also contain definitions of the term "sexual offender" along with qualifying offenses.

¹¹ 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 sheriff's handle in-person registration and reregistration. See Florida Department of Law Enforcement, *About Us*, Updated Oct. 1, 2016, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last viewed Feb. 20, 2017). FDLE maintains a database which allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. See FDLE Website at <http://offender.fdle.state.fl.us/offender/Search.jsp> (last viewed on Mar. 2, 2017).

¹² Link to FDLE's Public Offender Homepage, available at <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWASHTSbLUQVw> (last visited on Feb. 20, 2017).

¹³ Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16911 et seq.

¹⁴ United States Department of Justice, Dru Sjojin National Sex Offender Public Website, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on Feb. 20, 2017).

¹⁵ *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance ("JAG Program Sheet"), United States Department of Justice, available at http://www.asca.net/system/assets/attachments/4390/JAG_Fact_Sheet.pdf (last viewed Feb. 20, 2017).

¹⁶ This standard is satisfied if a jurisdiction carries out SORNA requirements (as interpreted and explained by DOJ guidelines). Substantial implementation does not necessarily mean full implementation. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, United States Department of Justice, *Jurisdictions that have substantially implemented SORNA*, available at http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on Feb. 20, 2017); see also Office of Justice Programs, United States Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), *SORNA Implementation Status*, available at <https://ojp.gov/smart/sorna-map.htm> (last viewed Feb. 20, 2017).

Specified Information at Time of Registration, Electronic Mail Addresses, and Internet Identifiers

Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is in or out of custody or supervision. Generally, the registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).¹⁸

Sections 775.21 and 943.0435, F.S., require sexual predators and sexual offenders to provide specified information at the time of initial registration. This includes:

- Name;
- Social security number;
- Age;
- Race;
- Sex;
- Date of birth;
- Height;
- Weight;
- Tattoos or other identifying marks;
- Hair and eye color;
- Photograph;
- Address of legal residences, including current, known, temporary, transient, or future;
- Electronic mail addresses and all Internet identifiers;
- Home and cellular telephone numbers;
- Employment information and other additional information;
- Vehicle information - make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned;
- Dates and places of conviction and related information such as fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender;
- Information regarding alien immigration status;
- Information regarding whether the offender is enrolled or employed by an institution of higher education; and
- Changes of status (change of address, change of employment, etc.)¹⁹

Among these requirements, s. 775.21(6)(g)5.a., F.S., provides: "A sexual predator shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers." Similarly, s. 943.0435(4)(e), F.S., provides: "A sexual offender shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers."

Section 943.0437(2), F.S., in turn, indicates, "the department may provide information relating to electronic mail addresses and Internet identifiers, maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of

¹⁷ Elysa Batista, *Florida Becomes Third State to Comply with Sex Offender Tracking Law*, NAPLES DAILY NEWS, June 19, 2010, available at <http://archive.naplesnews.com/news/state/florida-becomes-third-state-to-comply-with-sex-offender-tracking-law-ep-394657717-343306372.html> (last viewed Feb. 20, 2017).

¹⁸ ss. 775.21(6)(e) and 943.0435(2)(a), F.S.

¹⁹ ss. 775.21(6)(a) and (6)(g)(5), and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the department.”

Section 943.0437(1), F.S., defines the term commercial social networking website 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 users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.”

Section 775.21(6)(i), F.S., requires a sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida to report in person to the local sheriff’s office within 48 hours before the date he or she intends to leave the state, or at least 21 days if the intended residence of 5 days or more is outside of the United States, along with other travel details.

Section 775.21(6)(k)2., F.S., provides that the sexual predator registration list compiled by FDLE is a public record.²⁰ FDLE may disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose.²¹

The requirement to register electronic mail addresses and instant messaging names has been in place since 2007.²² The requirement to register Internet identifiers was added in 2014.²³ In 2016, the Florida Legislature amended the definition of “Internet identifier.” The prior definition provides: “‘Internet identifier’ means 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).”^{24, 25}

The 2016 Legislature passed HB 1333/SB 1662, which included an expanded definition of Internet identifiers and also required the collection of Internet identifiers associated with website or URL²⁶ or software applications. The amended definition of “Internet identifier,” which had an effective date of October 1, 2016, provides:

- “Internet identifier” includes, but is not 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, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes.²⁷

Shortly before the amended definition of “Internet identifier” took effect, a group of plaintiffs in Florida, who had been convicted as sexual offenders, filed a lawsuit against the Commissioner of FDLE in federal court.²⁸ The plaintiffs argued that the requirement to register all Internet identifiers violated the First Amendment. The plaintiffs also argued that the definition of an Internet identifier was

²⁰ s. 775.21(6)(k)2., F.S.

²¹ *Id.*

²² Ch. 2007-143, Laws of Fla.

²³ Ch. 2014-5, Laws of Fla.

²⁴ s. 775.21(2)(i), F.S. (2015).

²⁵ Section 943.0435(1)(e), F.S., provides that “‘Internet identifier’ has the same meaning as provided in s. 775.21.”

²⁶ “URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files).” *See* Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last viewed Feb. 17, 2017).

²⁷ Ch. 2016-104, Laws of Fla. (amending s. 775.21(2)(i), F.S. and renumbering it s. 775.21(2)(j), F.S.).

²⁸ The current Commissioner of FDLE is Richard “Rick” L. Swearingen, and the lawsuit was filed against the Commissioner acting in his official capacity, in the United States District Court for the Northern District of Florida, Tallahassee Division. The style of the case was *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS (N.D. Fla. Aug. 9, 2016), but was later changed to “*Delgado et al. v. Swearingen*.”

unconstitutionally vague and sought a preliminary injunction. On September 27, 2016, the federal court issued a preliminary injunction regarding the definition of Internet identifiers. The court determined that the language regarding Internet identifiers was overbroad and vague and required an individual to either forego protected speech or run the risk of criminal prosecution.²⁹ However, the court noted that the injunction did not preclude enforcement of the prior definition of Internet identifier.³⁰

Effect of the Bill

The bill amends s. 775.21(2)(j), F.S., providing a new definition of “Internet identifier.” Under the bill:

“Internet Identifier” means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph for such personal information.

The bill also amends s. 775.21(2)(m), F.S., redesignating other subsections and paragraphs to create a definition for “Social Internet communication.” Under the bill:

“Social Internet communication” means any communication through a commercial social networking website, as defined in s. 943.0437, or application software. The term “social Internet communication” does not include any of the following: communication for which the primary purpose is the facilitation of commercial transactions involving goods or services; communication on an Internet website for which the primary purpose of the website is the dissemination of news; or communication with a governmental entity. For purposes of this paragraph, the term “application software” means any computer program designed to run on mobile devices such as smartphones and tablet computers which allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

The bill amends ss. 775.21 and 943.0435, F.S., to conform these provisions to changes made by the act. The bill also requires sexual predators and sexual offenders to update any changes to the Internet identifier’s corresponding website homepage or application software name within 48 hours of using the Internet identifier.

The bill amends s. 775.21(6)(k)2., F.S., clarifying that FDLE’s sexual predator registration is a public record unless otherwise made exempt or confidential and exempt from s. 119.07(1), F.S., and s. 24(a) of Art. I of the State Constitution.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 2. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

²⁹ Order Granting Preliminary Injunction, issued in *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS, at 6-11 (N.D. Fla. Sept. 27, 2016). The Order noted, in part, that the amended definition of Internet identifier “trenches on First Amendment rights and is unconstitutionally vague.” *Id.* at 11.

³⁰ *Id.* at 12.

Section 3. Reenacts s. 943.0437, F.S., relating to commercial social networking sites.

Section 4. Reenacts s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 5. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 6. Reenacts s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 7. Reenacts s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sex offenders.

Section 8. Reenacts s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 9. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 10. Reenacts s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 11. Reenacts s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sex offenders.

Section 12. Reenacts s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 13. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 14. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 15. Provides that the bill takes effect on becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.³¹

According to the Department of Corrections, in FY 15-16, there were 1,001 adjudicated offenders sentenced for registration/false information offenses related to sexual offenders and sexual predators. Of those adjudicated, 503 offenders received a sentence to prison with a mean sentence length of 40.2 months. It is unknown how many additional prison beds would be necessary for offenders violating the changes made in this bill.

³¹2017 Criminal Justice Impact Conference, Conference Results, HB 699, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB699.pdf> (last visited April 22, 2017).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.
2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (“CS”). The CS differs from the bill as filed in that the CS:

- Revised the definition of “social Internet communication” to incorporate an existing statutory reference and include the term “application software” for clarification and consistency.
- Made technical changes to conform to other parts of the act.

On April 24, 2017, the Judiciary Committee adopted an amendment and reported the bill favorably as a CS. The CS differs from the bill as filed in that the CS removes a cross-reference to s. 119.071(5)(I), F.S., that was set forth in s. 775.21(2)(j) , F.S.

This analysis is drafted to the CS as passed by the Judiciary Committee.