

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1301	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Sexual Offenders and Predators	98	Y's 0	N's
SPONSOR(S):	Fitzenhagen and others	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/SB 1226			

SUMMARY ANALYSIS

CS/HB 1301 passed the House on March 5, 2018. The bill was amended in the Senate on March 8, 2018, and March 9, 2018, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill as amended on March 9, 2018.

A person may qualify as either a sexual predator or sexual offender based on a conviction for a sexual offense in Florida or from another state. A sexual predator or sexual offender must comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements, including registration of all residences. A residence which must be registered by be permanent, temporary, or transient, and is generally defined as a place where a person abides, lodges, resides, remains or is located for 5 or more days.

CS/HB 1301 reduces the number of days used to determine residency from 5 to 3 for sexual predators or sexual offenders to register. If the court does not impose a prison sentence, the penalty for failure to register after July 1, 2018, carries a mandatory minimum sentence as follows:

- For a first offense, 6 months of community control with electronic monitoring.
- For a second offense, 1 year of community control with electronic monitoring.
- For a third offense, 2 years of community control with electronic monitoring.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system. According to the Department of Law Enforcement, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would increase the need for prison beds by an unquantifiable amount.

The bill was approved by the Governor on March 23, 2018, ch. 2018-105 L.O.F., and will become effective on July 1, 2018.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Sexual Offenders and Sexual Predators: Designation Criteria

Sexual Offenders

Under Florida law, a person is a sexual offender if he or she:

- Was released on or after October 1, 1997 from a criminal sanction resulting from a qualifying conviction;¹
- Establishes or maintains a residence in Florida and has not been designated a sexual predator by a court of this state but has been designated a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction, if such designation subjected or would have subjected him or her to registration or public notification in that state or jurisdiction;²
- Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a qualifying conviction;³ or
- Has been adjudicated delinquent on or after July 1, 2007, for a qualifying offense, if the juvenile was at least 14 years old at the time he or she committed the offense.⁴

Qualifying convictions for sexual offender designation include:

- Sexual misconduct with an individual with a developmental disability;⁵
- Sexual misconduct with a mental health patient by an employee;⁶
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;⁷
- Luring or enticing a child, with a prior sexual conviction;⁸
- Human trafficking;⁹
- Sexual battery;¹⁰
- Unlawful sexual activity with minors;¹¹
- Lewd or lascivious battery, molestation, conduct, or exhibition;¹²
- Video voyeurism with prior video voyeurism conviction;¹³
- Lewd or lascivious offense on an elderly person;¹⁴
- Sexual performance by a child;¹⁵
- Providing obscene materials to a minor;¹⁶
- Computer pornography involving minors;¹⁷
- Soliciting a minor over the internet;¹⁸

¹ S. 943.0435(1)(h)1.a.(II), F.S.

² S. 934.0435(1)(h)1.b., F.S.

³ S. 934.0435(1)(h)1.c., F.S.

⁴ S. 934.0435(1)(h)1.d., F.S.

⁵ S. 393.135(2), F.S.

⁶ S. 394.4593(2), F.S.

⁷ SS. 787.01 & 787.02, F.S.

⁸ S. 787.025(2), F.S.

⁹ S. 787.06(3)(b), (d), (f), or (g), F.S.

¹⁰ S. 794.011, excluding 794.011(10), F.S.

¹¹ S. 794.05, F.S.

¹² S. 800.04, F.S.

¹³ S. 810.145(8), F.S.

¹⁴ S. 825.1025, F.S.

¹⁵ S. 827.071, F.S.

¹⁶ S. 847.0133, F.S.

¹⁷ S. 847.0135(2), F.S.

- Traveling to meet minors;¹⁹
- Lewd or lascivious exhibition over the internet;²⁰
- Transmission of child pornography by electronic device or equipment;²¹
- Transmission of material harmful to minors;²²
- Selling or buying minors to engage in sexually explicit conduct;²³
- Racketeering with written findings that the racketeering involved at least one sexual offense;²⁴
- Sexual misconduct with a forensic client;²⁵ and
- Sexual misconduct by an employee on a juvenile offender.²⁶

Qualifying delinquency adjudications for sexual offender designation include:

- Sexual battery;²⁷
- Lewd or lascivious battery by encouraging, forcing, or enticing any person under 16 years old to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,²⁸ if either:
 - The victim is under 12 years old; or
 - The court finds sexual activity by the use of force or coercion;
- Lewd or lascivious molestation against a victim less than 12 years old,²⁹ if the court finds molestation involving unclothed genitals;
- Lewd or lascivious molestation against a victim at least 12 years old but less than 16 years old,³⁰ if the court finds both:
 - Use of force or coercion; and
 - Unclothed genitals.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;³¹
- Capital, life, or first degree felony sexual battery;³²
- Capital, life, or first degree felony lewd or lascivious battery or molestation;³³
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;³⁴
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;³⁵ or

¹⁸ S. 847.0135(3), F.S.

¹⁹ S. 847.0135(4), F.S.

²⁰ S. 847.0135(5), F.S.

²¹ S. 847.0137, F.S.

²² S. 847.0138, F.S.

²³ S. 847.0145, F.S.

²⁴ S. 895.03, F.S.

²⁵ S. 916.1075(2), F.S.

²⁶ S. 985.701(1), F.S.

²⁷ S. 794.011, F.S.

²⁸ S. 800.04(4)(a)2., F.S.

²⁹ S. 800.04(5)(c)1., F.S.

³⁰ S. 800.04(5)(d), F.S.

³¹ SS. 787.01 & 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

³² *Supra*, FN 27.

³³ S. 800.04, F.S.

³⁴ *Supra*, FN 23.

- A conviction for a similar offense committed in another jurisdiction.³⁶

The court must make written findings designating a person who meets the criteria as a sexual predator.³⁷

Registration Requirements for Sexual Offenders and Sexual Predators

Initial Registration

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.³⁸

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in custody of a private correctional facility;³⁹
 - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;⁴⁰
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;⁴¹
- In person at the sheriff's office in the county where:
 - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;⁴² or
 - The sexual predator was designated a sexual predator within 48 hours after such finding is made.⁴³

Additionally, within 48 hours of registration, a sexual offender and a sexual predator who is not incarcerated and resides in the community must register in person at a driver license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and:

- Secure a Florida driver license, renew a Florida driver license, or secure an identification card, if otherwise qualified;
- Identify himself or herself as a sexual offender or sexual predator;
- Provide his or her permanent, temporary, or transient residence; and
- Submit to a photograph.⁴⁴

³⁵ S. 775.21(4)(a)1.b., F.S.

³⁶ S. 775.21(4), F.S.

³⁷ SS. 775.21(4)(c) & 775.21(5), F.S.

³⁸ S. 943.0435(2)(a)1., F.S.

³⁹ S. 775.21(6)(b), F.S.

⁴⁰ Id.

⁴¹ S. 775.21(6)(c), F.S.

⁴² S. 775.21(6)(e)a., F.S.

⁴³ S. 775.21(6)(2)b., F.S.

⁴⁴ S. 775.21(6)(f)1., F.S.

Information Required for Registration

During his or her initial registration, the sexual offender or sexual predator must provide the following information:

- Name;
- Date of birth;
- Social Security number;
- Race;
- Sex;
- Height and weight;
- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints and palm prints;
- Photograph;
- Employment information;
- Address of permanent or legal residence;
- Address of any current temporary residence;
- Address, location, or description of any transient residence, if the person does not have a permanent or temporary address;
- Dates of any current or known future temporary residence;
- Make, model, color, vehicle information number, and license tag number of all vehicles owned;
- Home and cellular telephone numbers;
- Electronic mail addresses;
- Internet identifiers and each Internet identifier's corresponding website homepage or application software name;
- Date and place of each conviction and a brief description of the crime or crimes committed by the offender;
- Information about immigration status, if the person is an alien;
- Information about any professional licenses;
- Vehicle identification number, license tag number, registration number, and a description of a motor vehicle, trailer, mobile home, or manufactured home, if it is the person's residence;
- Hull identification number, manufacturer's serial number, name, registration number, and description of a vessel, live-aboard vessel, or houseboat, if it is the person's residence; and
- Enrollment, volunteer, or employment status at an institution of higher education and the name and address of the institution, if applicable.⁴⁵

Residence

Residence, for the purposes of registration, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has not specific street address.⁴⁶

⁴⁵ SS. 775.21(6)(a) & 943.0435(2)(b), F.S.

⁴⁶ S. 775.21, F.S.

Continuing Reporting Requirements

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.⁴⁷

A sexual offender or sexual predator must report in person to reregister at specified intervals:

- Twice a year for most sexual offenders;⁴⁸
- Four times a year for all sexual predators, some sexual offenders, and all juvenile sexual offenders;⁴⁹ or
- Every 30 days for a sexual offender or sexual predator with a transient residence.⁵⁰

Generally, failing to comply with registration requirements is a third degree felony,⁵¹ punishable by up to 5 years in prison and a \$5,000 fine.⁵²

Criminal Sentencing

Types of Sentences

Felony sentencing options available to a court include:

- Incarceration in state prison;
- Incarceration in the county jail;
- Probation; and
- Community control.

For an incarcerative sentence, a court may sentence a person to jail for up to 1 year or to prison for over 1 year. A supervisory sentence may be probation or community control. Probation is a form of community supervision requiring specified contacts with probation officers and other terms and conditions,⁵³ while community control is a more intensive form of supervision involving an individualized program in which the freedom of an offender is restricted within the community, home, or residential placement.⁵⁴ The court may also impose a split sentence, in which an offender is sentenced to a term of incarceration followed by a term of supervision.⁵⁵

⁴⁷ SS. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

⁴⁸ S. 943.0435(14), F.S.

⁴⁹ SS. 775.21(8)(a) & 943.0435(14), F.S.

⁵⁰ SS. 775.21(6)(g)2.a. & 943.0435(4)(b)2., F.S.

⁵¹ SS. 775.082 & 775.083, F.S.

⁵² SS. 775.21(10) & 943.0435(9)(a), F.S.; but see, SS. 775.21(6)(f)3., 775.21(6)(j), 943.0435(4)(c), & 943.0435(8), F.S. (providing for circumstances in which failure to comply with registration requirements is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine. SS. 775.082 & 775.083, F.S.).

⁵³ S. 948.001(8), F.S.

⁵⁴ S. 948.001(3), F.S.

⁵⁵ S. 948.012, F.S.

Criminal Punishment Code

Felony offenses subject to the Criminal Punishment Code⁵⁶ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.⁵⁷ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.⁵⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.⁵⁹ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁶⁰

If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula.⁶¹ If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.⁶²

Downward Departure

A court may downward depart from the lowest permissible sentence upon finding circumstances or factors to reasonably justify doing so.⁶³ Mitigating circumstances that justify a downward departure may include:

- The departure results from a legitimate, uncoerced plea bargain;
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct;
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired;
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment;
- The need for payment of restitution to the victim outweighs the need for a prison sentence;
- The victim was an initiator, willing participant, aggressor, or provoker of the incident;
- The defendant acted under extreme duress or under the domination of another person;
- Before the identity of the defendant was determined, the victim was substantially compensated;
- The defendant cooperated with the state to resolve the current offense or any other offense;
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse;
- At the time of the offense the defendant was too young to appreciate the consequences of the offense;
- The defendant is to be sentenced as a youthful offender;
- The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence; or
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.⁶⁴

⁵⁶ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

S. 921.002, F.S.

⁵⁷ S. 921.0022, F.S.

⁵⁸ SS. 921.0022 & 921.0024, F.S.

⁵⁹ S. 921.0024(2), F.S.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ S. 921.0026, F.S.

⁶⁴ Id.

Failure to Register Offenses under the Criminal Punishment Code

Failure to register as a sexual offender or sexual predator scores a level 7 under the Criminal Punishment Code.⁶⁵ A person convicted of a level 7 offense automatically scores a minimum prison sentence of 21 months, without taking into account any other current offenses, prior history, or other factors that may contribute additional points.⁶⁶ Because a person must have been convicted of a sexual offense in order to qualify as a sexual offender or predator, a person usually has significant criminal history points, leading to an even higher minimum permissible sentence.

The court must find a valid reason for downward departure in order to sentence a person convicted of failure to register to any nonprison sanction.

Mandatory Minimum Sentences

Florida law imposes mandatory minimum sentences for certain offenses. For example, a person who commits certain violent offenses while carrying a firearm is subject to a 10 year mandatory minimum sentence,⁶⁷ and a person who traffics 28 grams or more but less than 200 grams of cocaine is subject to a 3 year mandatory minimum sentence.⁶⁸ Absent waiver by the prosecutor, a judge may not sentence an offender below the statutory mandatory minimum sentence; however, the prosecutor may waive the mandatory minimum.⁶⁹

Although mandatory minimum sentences are typically incarcerative, some require a degree of supervision. For example, in crimes of domestic violence, the court must order a person to a minimum term of 1 year of probation and require him or her to complete the batterers' intervention program.⁷⁰ The statute does not specify whether this probationary term must be in addition to any term of incarceration; however, the Third District Court of Appeal reversed a trial court for failing to impose 1 year of probation for a domestic violence offense when it sentenced the offender to 3 years of prison.⁷¹

Additionally, when sentencing for certain sexual offenses committed on or after October 1, 2014,⁷² if the court sentences the offender to prison for a term less than the maximum possible sentence, it must include as part of the sentence either:

- 2 years of probation or community control; or
- The remainder of the maximum term as probation or community control, if appending 2 years of supervision to the sentence would exceed the statutory maximum for the offense.⁷³

⁶⁵ S. 921.0022(3)(g), F.S.

⁶⁶ S. 921.0024, F.S.

⁶⁷ S. 775.087, F.S.

⁶⁸ S. 893.135(1)(b)a., F.S.

⁶⁹ *Madrigal v. State*, 545 So.2d 392 (Fla. 3d DCA 1989) (prosecutor has right to waive the mandatory minimum sentence requirement absent any rule or statutory authority).

⁷⁰ S. 741.281, F.S.

⁷¹ *State v. Scanes*, 973 So.2d 659 (Fla. 3d DCA 2008).

⁷² Unlawful killing of a person engaged in the perpetration of sexual battery, S. 782.04(1)(a)2.c.; aggravated kidnapping or false imprisonment of a child under 13, SS. 787.01(3)(a)2. or 3. & 787.02(3)(a)2. or 3. F.S.; sexual battery, S. 794.011, F.S.; lewd or lascivious offenses, SS. 800.04 & 825.1025, F.S.; lewd or lascivious exhibition over the internet, S. 847.0135(5), F.S.

⁷³ S. 948.012(5), F.S.

Effect of Proposed Changes

CS/HB 1301 reduces the aggregate and consecutive number of days to determine residency from 5 to 3 for sexual predator or sexual offender registration purposes.

The bill also requires a court to impose a mandatory minimum sentence of community control if the court does not sentence the offender to prison, as follows:

- For a first offense, 6 months of community control with electronic monitoring.
- For a second offense, 1 year of community control with electronic monitoring.
- For a third or subsequent offense, 2 years of community control with electronic monitoring.

As failure to register as a sexual predator or sexual offender automatically scores a minimum permissible sentence of prison under the Criminal Punishment Code, the community control mandatory minimums only apply if the court downward departs from the sentencing guidelines to impose a nonprison sanction. The court may not waive or depart from the mandatory minimum.

The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.⁷⁴

The bill provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would increase the need for prison beds by an unquantifiable amount.⁷⁵

⁷⁴ ss. 775.21(10)(g) and 943.0435(13), F.S.

⁷⁵ The Office of Economic and Demographic Research, *HB 1301 – Sexual Offenders and Predators*, Criminal Justice Impact Conference, February 12, 2018.

Per the Department of Law Enforcement (FDLE), as of June 2017, there were a total of 28,958 sexual predators and sexual offenders who were not incarcerated in the state of Florida. Per DOC, in FY 16-17, there were 1,179 offenders sentenced for registration offences, and 618 of these offenders were sentenced to prison. It is not known how many more offenders will be charged with these offenses with the reduction in days used to determine residency.⁷⁶

The Department of Corrections (DOC) states that correctional probation officers who supervise sex offenders on community control with electronic monitoring have reduced caseloads compared to other correctional probation officers due to the workload associated with this type of supervision and the monitoring required. The fiscal impact to DOC is indeterminate due to the unknown number of offenders who will be sentenced under the mandatory minimum sentence.⁷⁷

According to DOC, for FY 15-16 the average per diem for community supervision was \$5.52 and the current rate for electronic monitoring is \$4.50 per day. The costs of any programming changes related to the mandatory minimum sentence can be absorbed within existing resources.⁷⁸

FDLE states that the proposed changes in the bill will require updating sexual offender and sexual predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website, and training materials. FDLE has determined the implementation costs can be absorbed within existing resources.⁷⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to FDLE, eighteen sheriffs' offices have three or more consecutive days where sexual offender or sexual predator registration is unavailable and more than 15 percent (4,637) of the offenders/predators that have an active, permanent, temporary, or transient address in Florida list an active address in those 18 counties. Seven sheriffs' offices have limited registration times and more than 16 percent (4,963) of offenders/predators that have an active permanent, temporary, or transient address in Florida list an active address in those counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

⁷⁶ Id.

⁷⁷ Florida Department of Corrections, *SB 1226: Sentencing for Sexual Offenders and Sexual Predators (Similar HB 1301)*, 2018 Agency Legislative Bill Analysis, January 19, 2018.

⁷⁸ Id.

⁷⁹ Florida Department of Law Enforcement, *HB 1301 – Sexual Offenders and Predators*, 2018 FDLE Legislative Bill Analysis, January 9, 2018.

