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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-58, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: HB 841, 2ND ENGROSSED
RELATING TO: Sexual Predators and Offenders
SPONSOR(S): Representatives Bowen, McGriff & others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
- (2) COLLEGES AND UNIVERSITIES YEAS 10 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
- (4)
- (5)

I. SUMMARY:

The bill changes sexual predator and sexual offender laws to maintain compliance with the federal Jacob Wetterling Act and the recently adopted Campus Sex Crimes Prevention Act. Failure to comply with federal standards by October of 2002 could subject the state to a 10 percent reduction in federal Byrne Formula Grant Fund monies. The bill revises several provisions relating to sexual offenders to reflect current provisions under sexual predator laws.

This bill contains the following provisions:

- Requires registered sexual predators and offenders who are enrolled or employed at an institution of higher education in Florida to register certain information with the state and to provide notice of each change of enrollment or employment status at an institution.
- Clarifies registration requirements of a sexual offender who is required to register in another state and who moves to Florida; and of sexual offenders who are under another state's supervision but reside in Florida.
- Specifies the duty of the court to uphold laws governing sexual predators and sexual offenders and clarifies provisions relating to the removal of sexual offender registration requirements by a court.
- Revises provisions to clarify initial registration and change of name and address procedures for sexual predators and sexual offenders.
- Revises the definition of "sexual offender" to include recently created transmission of pornography offenses.
- Provides that when a victim of any specified sexual offense, regardless of whether transmission of bodily fluid occurred, is a minor, a disabled adult, or elderly person, upon request of the victim or the victim's parent or legal guardian, the court shall order the person charged with the offense to undergo HIV testing. Results of the HIV testing must be disclosed, no later than 2 weeks after the court receives the results, to the person charged with the offense, and upon request, to the victim or the victim's parent or the victim's legal guardian, and to public health agencies.

This bill has an effective date of July 1, 2002.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill contains provisions that will impose additional registration requirements for sexual predators and offenders who are enrolled, employed, or carrying on a vocation at a community college, state university, or independent postsecondary institution.

B. PRESENT SITUATION:

Federal Sexual Predator and Sexual Offender Registration Laws

The Violent Crime Control and Law Enforcement Act of 1994, (PL. 103-322) contains the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act" (codified at 42 U.S.C. 14071), which provides financial incentives for states to establish registration requirements for persons convicted of certain crimes against children and violent sexual offenses. States that fail to comply with the federal mandate are subject to a 10 percent reduction in Byrne Formula Grant funding¹. The Wetterling Act requires states to allow law enforcement agencies to release relevant information about sexual offenders in order to protect the public. This act also requires states to provide for the registration of residents who were convicted of a sexual offense in another state.

Congress amended the Violent Crime Control and Law Enforcement Act of 1994 on October 28, 2000, with the passage of the Campus Sex Crimes Prevention Act. (See Pub. L. No. 106-386.) Pursuant to this act, individuals required to register as a sex offender with a state must also provide notice to that state of any institution of higher education where the individual is employed, carries on a vocation, or is a student. These individuals are also required to report each change in enrollment or employment status at the institution.

This registration information must be made available to law enforcement agencies with jurisdiction where an institution of higher education is located, and states must ensure that the information is entered into the state sexual offender registry. Educational institutions are specifically not required to request the information from the state. Under the Campus Sex Crimes Prevention Act, educational institutions must advise the campus community of methods for obtaining sexual offender information. This act does not prohibit schools from disclosing sexual offender information provided to the institution.

Florida's Sexual Predator Registration

Florida's Sexual Predator Act is established in s. 775.21, F.S., and provides that an offender shall be designated as a sexual predator for certain statutorily designated sexual offenses. The sexual

¹ The federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program provides funding for state and local crime eradication efforts.

predator designation is made by the court sentencing the offender for an offense applicable to the sexual predator designation. This law provides legislative findings and intent regarding the necessity for sexual predator registration and community and public notification regarding sexual predators.

Section 775.21(6), F.S., specifies the type of information that must be provided by the predator in each instance of registration, and how it is to be collected, transmitted, maintained, and disseminated by the agencies responsible for implementing the law. Penalties are provided for the sexual predator's failure to comply with the registration requirements and for misuse of public records information regarding sexual predators, s. 775.21(10), F.S.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with DOC and provide certain information.² If the sexual predator is not in the custody or control of, or under the supervision of, DOC, or is not in the custody of a private correctional facility, and the predator resides in this state, the predator must register in person at an office of the Florida Department of Law Enforcement (FDLE), or at the sheriff's office in the county in which the predator resides, and must provide certain information. Registration procedures are also provided for sexual predators in the custody of a local jail or under federal supervision.

A sexual predator who is not incarcerated and resides in the community, including those under DOC supervision, must register in person at a driver's license facility of the Department of Highway Safety and Motor Vehicles (DHSMV).

A sexual predator who plans to establish residency in another state must report in person to the sheriff of the county of current residence or FDLE within 48 hours before date of departure to provide intended residence information. Failure to provide this information is a third degree felony pursuant to s. 775.21(6)(i), F.S.

As provided in s. 775.21(5)(d), F.S., a person who resides in Florida and who has been designated a sexual predator, a violent sexual predator or another sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, in the other state must register as a sexual offender in the manner set forth in the laws pertaining to sexual offender registration.³ These out of state offenders are also subject to the community and public notifications and penalty provisions of the sexual offender laws.

Law enforcement agencies must inform members of the community and the public of a sexual predator's presence as set forth in s. 775.21(7), F.S. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff or the chief of police where the sexual predator resides must notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the sexual predator's temporary or permanent residence of the presence of the sexual predator. FDLE and DOC are required to verify the addresses of sexual predators, and that verification must be consistent with the provisions of the federal Jacob Wetterling Act.

A designated sexual predator must maintain registration with FDLE for the duration of the predator's life, unless a full pardon has been granted, or a conviction has been set aside for any felony offense meeting the criteria for the sexual predator designation. However, the law provides a mechanism for the sexual predator to petition for removal of the sexual predator designation after a certain

² s. 775.21(6)(b), F.S.

³ ss. 943.0435 and 944.607, F.S.

period has elapsed, if the petitioner has had no arrests during that period and the court is otherwise satisfied the petitioner is not a current or potential threat to public safety.

Florida's Sexual Offender Registration

Registration requirements and other provisions relevant to certain sexual offenders (those not designated sexual predators) are provided in ss. 943.0435 and 944.607, F.S. Many of the requirements and provisions in these sections are similar, if not identical, to those provided for sexual predators under s. 775.21, F.S.

Community and public notification regarding registered sexual offenders is authorized but not mandatory as provided by ss. 943.043 and 944.607(3)(d), (4), F.S.

A sexual offender must maintain registration with FDLE for the duration of his or her life, unless a full pardon has been granted, or a conviction has been set aside for any offense meeting the criteria for the sexual offender designation. However, a petition for removal of the sexual offender registration requirements may be filed by a sexual offender who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and has not been arrested for any offense since release. A petition may also be filed by a sexual offender who was 18 years of age or younger at the time of the offense, had adjudication withheld, had 10 years elapse since being placed on probation and has not been arrested for any offense.

HIV Testing For Persons Charged With Certain Offenses

Section 960.003, F.S., provides that in any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any enumerated offense⁴ which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order that person to undergo human immunodeficiency virus (HIV) testing.

Performed under the direction of the Department of Health, test results are disclosed to the person charged with the offense, and upon request, to the victim or the victim's legal guardian, or the parent or legal guardian if the victim is a minor, and to certain public health agencies. Current law does not provide a proscribed time period for the disclosure of such test results.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Section 1:

This section amends s. 775.21, F.S., relating to sexual predator definitions and registration requirements. "Institution of higher education" is defined as a community college, college, state university, or independent postsecondary institution. "Change in enrollment or employment status" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.

⁴ Enumerated offenses include: sexual battery, incest, lewd, lascivious, or indecent assault or act upon any person less than 16 yrs. of age, assault, aggravated assault, battery, aggravated battery, child abuse, aggravated child abuse, abuse of an elderly person or disabled adult, aggravated abuse of an elderly person or disabled adult, sexual performance by a person less than 18 yrs. of age, prostitution, or offenses relating to donation of blood, plasma, organs, skin or other human tissue. s. 775.0877(1)(a) – (n), F.S.

The bill requires sexual predators who are enrolled, employed, or carrying on a vocation at an institution of higher education to provide the institution's name, address, county, campus information, and enrollment or employment status to FDLE. Within 48 hours after any change in enrollment or employment status, the sexual predator must report the change, in person, to the sheriff's office, or to the DOC if under the supervision of or in the custody or control of DOC. The sheriff or DOC must promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

Section 775.21(6)(e), F.S., is amended to clarify provisions relating to changes in a sexual predator's permanent or temporary residence or name.

Section 2:

Section 2 amends s. 775.24, F.S., relating to the duty of the court to uphold laws governing sexual predators and sexual offenders. Under current law, if a court enters an order or injunction that affects an agency's performance of a duty or limits the agency's exercise of authority conferred under sexual predator and sexual offender laws, the affected agency may, within 60 days after the receipt of the order, move to modify or set aside the order, or to dissolve the injunction. This bill extends the time period for such a motion from 60 days to one year.

Section 3:

This section amends s. 943.0435, F.S.; relating to the registration of sexual offenders who are not incarcerated or under the supervision of DOC. Qualifying offenses are amended to include two recently created offenses: transmission of pornography by electronic device or equipment; and transmission of material harmful to a minor by electronic device or equipment.

The bill revises the definition of "sexual offender" to require registration of an offender who resides in the state and who has not been designated as a sexual predator by a Florida court, but who has been designated as a sexual predator, a sexually violent predator, or other sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, as a result of that designation, or who would be if the person were a resident of that state or jurisdiction. *These provisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

The definition of sexual offender is further amended to require the registration of a person who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, an enumerated sexual offense and who establishes or maintains a residence in Florida.

For purposes of sexual offender registration, the bill defines "institution of higher education" and "change in enrollment or employment status." These definitions are the same as those previously described under Section 1 of the bill. The bill requires sexual offenders who are enrolled at or employed on campus to register when beginning or terminating employment. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

This section clarifies provisions relating to changes in a sexual offender's permanent or temporary residence or name.

Section 943.0435(11)(b), F.S., is amended to provide that a sexual offender may petition the court for removal of the registration requirement if:

- the offender was 18 years of age or younger at the time of the offense;
- the victim was 12 years of age or older;
- adjudication was withheld; and
- the offender has been released from all sanctions and 10 years have elapsed since being placed on probation, and the offender has not been arrested for any offense since the date of conviction of the qualifying offense.

This revision addresses the unintended effects of changes made to the law by the 2000 Legislature, which could be construed to allow an offender who committed an act using violence, force, threat, intimidation or coercion against a minor to be removed from the obligations of sexual offender registration. (See Chapter 2000-207, L.O.F.)

Section 943.0435(11), F.S., is amended and requires a sexual offender who resides in Florida and who has been designated a sexual offender by another state, to maintain sexual offender registration for the duration of his or her life. This registration is maintained until the person provides FDLE with an order from the court that designated the person as a sexual predator, a sexually violent predator, or another sexual offender designation in the state in which the order was issued, stating that such designation has been removed.

This section is further amended by providing legislative statements and findings of public policy concerning sexual offenders. The Legislature finds that sexual offenders pose a risk to the public; these offenders have a reduced expectation of privacy; releasing sexual offender information to law enforcement agencies and the public promotes public safety. The Legislature finds that designation as a sexual offender is a status, not a sentence or punishment. This language was enacted by the 2000 Legislature as Committee Substitute for Senate Bills 1400 and 1224, but was not incorporated into the 2000 Florida Statutes. (See Ch. 2000-207, L.O.F.)

Section 4:

This section of the bill creates s. 943.0436, F.S., relating to the duty of the court to uphold sexual predator and sexual offender laws. In this section, the Legislature expresses intent that laws relating to sexual predators and sexual offenders are substantive law. Unless a court determines that a person or entity is not operating in accordance with the laws or that the laws or any part of the laws are unconstitutional or unconstitutionally applied, a court shall not limit or nullify requirements placed on sexual predators and sexual offenders under these laws. If a person meets the criteria for designation as a sexual predator or sexual offender, the court cannot: exempt that person from the designation or registration requirements; restrict the compiling, reporting, or release of public records information relating to sexual predators or sexual offenders; or prevent any person or entity from performing its duties relating to their authority under these laws. An agency affected by a court order that limits its authority or affects its duties may move to modify or set aside the order, or to dissolve the injunction within 1 year after the receipt of the order or injunction.

Section 5:

This section amends s. 944.606(b), F.S., relating to notification regarding sexual offenders release from incarceration. The definition of "sexual offender" is amended to include the offense of transmission of child pornography⁵ as a qualifying offense for purposes of sexual offender registration.

Section 6:

Section 6 of HB 841 amends 944.607, F.S., relating to sexual offenders under the custody or control of, or under the supervision of DOC or a private correctional facility. The definition of "sexual offender" is amended to include the offense of transmission of pornography⁶ as a qualifying offense for purposes of sexual offender registration.

The bill revises the definition of a "sexual offender" who is in the custody or control of, or under the supervision of DOC or is in the custody of a private correctional facility for the purposes of sexual offender registration. It requires the registration of an offender who resides in the state and who has not been designated as a sexual predator by a Florida court, but who has been designated as a sexual predator, a sexually violent predator, or other sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, as a result of that designation, or who would be if the person were a resident of that state or jurisdiction.

These provisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.

For purposes of sexual offender registration, the bill defines "institution of higher education" and "change in enrollment or employment status." These definitions are the same as those previously described under Section 1 of the bill. The bill requires sexual offenders who are enrolled at or employed on campus to register when beginning or terminating employment. *These revisions are intended to indicate that Florida's laws are consistent with federal standards in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended by the Campus Sex Crimes Prevention Act.*

Section 7: This section of the bill amends s. 960.003, F.S., to provide that when a victim of any enumerated sexual offense, *regardless of whether bodily fluid was transmitted from one person to another*, is a minor, a disabled adult, or elderly person, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order the person charged with the offense to undergo HIV testing. The results of the HIV testing must be disclosed no later than two weeks after the court receives the results and must be provided to the person charged with or alleged by petition for delinquency to have committed any enumerated sexual offense or the person convicted of or adjudicated delinquent for any enumerated sexual offense. The test results must also be disclosed to the victim or the victim's legal guardian or parent, and to specified public health agencies upon their request.

This bill is effective July 1, 2002.

⁵ s. 847.0137, F.S.

⁶ s. 847.0137, F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The extent to which the increased reporting requirements may have a fiscal impact on sheriff's offices or the Department of Corrections is unknown at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Sexual predator registration and notification laws have been found not to encroach on constitutional privacy interests, *Johnson v. State*, 795 So.2d 82 (Fla. 5th DCA 2000); not to violate state

constitutional due process rights, *id.*; and not to constitute double jeopardy, *Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998).

Retroactive application of the sexual predator registration and notification laws has been found not to constitute an ex post facto violation. See *Mendez v. State*, 798 So.2d 749 (Fla. 5th DCA 2001) (“ . . . [D]esignation as a sexual predator is ‘neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.’ *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997). Therefore, no ex post facto concerns exist that would prohibit applying the current statute to *Mendez*. *Rickman v. State*, 714 So.2d 538 (Fla. 5th DCA 1998); *Doe v. Portiz*, 142 N.J. 1, 662 A.2d 367 (N.J. 1995).”)

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee and Council Amendments: The Committee on Crime Prevention, Corrections and Safety adopted one amendment on January 30, 2002. This amendment revised ss. 943.0435, 944.606, and 944.607, F.S., and amended the definition of “sexual offender” to include recently created pornography transmission offenses as qualifying offenses for purposes of sexual offender registration.

On February 12, 2002 the Committee on Colleges & Universities adopted two amendments. Amendment 1 clarified that sexual offenders attending state colleges are also required to comply with the requirements placed upon them by the bill. Amendment 2 clarified that a change in enrollment or employment status of a sexual offender at an institution of higher education includes a change in location of enrollment or employment.

Floor Amendments: On March 7, 2002, the House adopted three committee amendments that had been traveling with the bill and passed the bill as amended. On March 15, 2002, the Senate adopted an amendment that provides for HIV testing of an offender when the victim of a specified sexual offense is a minor, a disabled adult, or elderly person, regardless of whether bodily fluid was transmitted, upon request of the victim or the victim’s guardian; and provides that HIV test results must be disclosed to specified persons no later than two weeks after the court receives the test results. On March 21, 2002, the House concurred with the Senate and passed the bill as amended. On April 22, 2002, the bill was signed by the Governor and became law as Chapter 2002-58, Laws of Florida.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Lynn Dodson

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AS REVISED BY THE COMMITTEE ON COLLEGES AND UNIVERSITIES:

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AS FURTHER REVISED BY THE COUNCIL ON HEALTHY COMMUNITIES:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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