

97-02: Florida's Sexual Predator, Sexual Offender, and General Felon Registration and Notification Procedures as of October 1, 1997

August 22, 1997

The 1997 Florida Legislature passed Senate Bill 958 (Ch. 97-299) to simplify sexual predator community notification standards, to expand registration obligations to sexual offenders as well as sexual predators, to revitalize Florida's general felon registration system and to otherwise improve the safety and well being of Florida's citizens and visitors. This Legal Bulletin summarizes the registration and notification procedures and attempts to answer operational questions regarding the new law. The following discusses the law as will be effective from October 1, 1997 forward.

SEXUAL PREDATOR PROCEDURES

I. Who is a sexual predator?

There are two ways of becoming a sexual predator:

One way is to commit (on or after 10/1/93) one of the several "one is enough" sexual predator offenses. The other way is to commit a "second offense" sexual predator offense (committing a listed sexual offense after having been previously been found to have committed certain other listed sexual offenses.)

A. The "one is enough" sexual predator offense:

Any person who has been convicted or is found to have committed, regardless of adjudication, or who pleads nolo contendere or guilty to any of the following offenses which occurred AFTER 10/1/93:

- **Any capital, life, or first degree felony violation of Chapter 794, (or of a similar law of another jurisdiction);**

These "Chapter 794" violations include:

--Sexual battery (or attempted sexual battery that causes injury of sexual organs) by person 18 years or older upon victim less than 12 years of age (capital offense);

--Sexual battery (or attempted sexual battery that causes injury of sexual organs) by person less than 18 years of age upon victim less than 12 years of age (life felony);

--Sexual battery upon person 12 years of age or older without victim's consent and use of deadly weapon or physical force likely to cause serious personal injury (life felony);

--Sexual battery upon person 12 years of age or older without victim's consent when victim is physically helpless to resist, when victim is coerced by threat of force or violence and victim reasonably believes the offender has ability to execute the threat (first degree felony);

--Sexual battery by reason of non-consent administration of narcotic, anesthetic, or intoxicating substance which mentally or physically incapacitates the victim (first degree felony);

--Sexual battery upon a victim known by offender to be mentally defective (first degree felony);

--Sexual battery upon victim who is physically incapacitated (first degree felony);

--Sexual battery by a law or correctional officer with control over the victim (first degree felony);

--Sexual battery by person of familial or custodial authority to person who is 12 years of age or older but less than 18 years of age (first degree felony);

--Sexual battery by a person of familial or custodial authority to a person who is under 12 years of age, or attempted sexual battery which causes injury to the sexual organs of victim (life felony).

(Or...)

- **Any violation of s.847.0145**, (or of a similar law of another jurisdiction);

These violations include:

--The selling or transfer of custody (or offering to sell/transfer) of a minor by a parent, guardian, or other person having custody or control of a minor knowing the minor will be portrayed in a visual depiction of sexually explicit conduct or with intent of promoting the conduct or assisting in the production of such conduct. (first degree felony);

--Purchasing or otherwise obtaining custody or control of a minor (or offering to buy/obtain custody) with knowledge that as a consequence the minor will be portrayed in a visual depiction of sexually explicit conduct or with intent of promoting the conduct or assisting in the production of such conduct (first degree felony).

B. The "second offense" sexual predator offense:

Any person who has been convicted or is found to have committed (on or after 10/1/93), regardless of adjudication, or who pleads nolo contendere or guilty to any second degree or greater felony violation of these Florida offenses (or similar law of another jurisdiction):

- --Chapter 794, This category of offenses includes:
- --All the previously listed Chapter 794 offenses PLUS

--Sexual battery upon person 12 years of age or older without consent of victim and not using physical force or violence likely to cause serious personal injury; or

--Attempts of, solicitations of, or conspiracy to commit first degree or higher Chapter 794 offenses;

- --F.S. 800.04 (Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years);
- --F.S. 827.071 (Use or promotion of child less than 18 years of age in a sexual performance or possession with intent to promote any depiction including sexual conduct by a child.) (Note: Mere possession of such depictions is a third degree felony and is NOT included in the sexual predator definition);
- --F.S. 847.0145 (Attempt, solicitation, or conspiring to sell or buy a minor).

After having been previously convicted of or found to have committed regardless of adjudication, or having pled nolo or guilty to any of these violations (or similar violation in another jurisdiction):

- F.S. 794.011(2), (3), (4), (5), or (8) (Sex battery upon victim less than 12 years of age, forcible sexual battery upon person 12 years of age or older, the "special conditions" sexual battery offenses upon person 12 years of age or older, non-forcible sexual battery upon person 12 years of age or older, solicitation to engage in, or actual sexual battery, by person in familial or custodial control of victim 12 or older but less than 18 years of age, or attempted or actual sexual battery by person in familial or custodial control of victim under the age of 12);
- F.S. 800.04 (Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years);
- F.S. 827.071 (Sexual performance by a child of less than 18 years of age);
- F.S. 847.0133 (Selling, renting, loaning, giving away, distributing, transmitting, or displaying obscene material to a minor under the age of 18 years);
- F.S. 847.0145 (Selling or buying of minors).

AND the "prior felony" resulted in a conviction or sentence or adjudication of delinquency entered separately, prior to the current offense.

HOWEVER, a previous offense will NOT be considered a "prior felony" for purposes of designating a sexual predator **if** the "prior offense"--

--Was committed more than 10 years before the primary offense,

AND

--The offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision or sanction, whichever is later.

II. Who must register as a sexual predator?

All Sexual Predators as determined by the offenses noted in Part I, who committed offenses on or after October 1, 1993, and for whom the court has made a written finding of sexual predator status. F.S. 775.21 allows a state attorney to secure a court's sexual predator written finding when it appears one should have been made, but was not or for offenders entering Florida from other jurisdictions.

III. When and how does a predator first register? (See F.S. 775.21(6).)

A. If he or she is in the custody of, control of or under the supervision of the Department of Corrections (DOC) (or private correctional institution), then DOC must register the predator with the Florida Department of Law Enforcement (FDLE). This includes any predator on probation, parole, or conditional release. In such cases, the probation officer, parole officer, or community control officer must register the predator.

B. If the predator is not in the custody of, control of, or under the supervision of the Department of Corrections, then the predator must initially register in person with either FDLE or the Sheriff in the county of his or her temporary or permanent residence. Registration must be within 48 hours after

establishing his or her temporary or permanent residence.

IV. What information is provided upon registering?

Name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence or temporary residence, date and place of any employment, date and place of each conviction, a brief description of the crime, genetic markers* (if not already taken), a photograph*, fingerprints*, and "any other information determined necessary" by FDLE." (See F.S. 775.21(6).)

*DNA blood samples should be ordered by the sentencing court at time of conviction, but may have to be obtained later if not previously secured. The Department of Corrections must be prepared to take both the required photographs of the predator and his/her fingerprints.

V. What else must predators do? (See F.S. 775.21(6).)

After a predator is no longer under the jurisdiction, supervision, or control of the Department of Corrections (or private correctional facility) and subsequent to the initial registration made in person at a sheriff's office or at FDLE, a sexual predator must register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) within 48 hours after any change in his or her permanent or temporary residence. He or she must always appear in person to renew his or her driver's license or Florida identification card. At any such renewal, registration information will be verified and updated as necessary. At each such appearance, DHSMV takes a photo of the predator and forwards a copy of it, along with all the predator's information to FDLE and DOC. The predator bears the costs of the process.

Registration obligations continue for life unless the predator has had his or her civil rights restored, or has received a full pardon or has had a conviction set aside in a postconviction proceeding for an offense that was used in making the offender a sexual predator. After ten years after release from confinement, supervision, or sanctions (whichever is later) with no arrests for felonies or misdemeanors, a predator may petition the criminal division of circuit court to remove his or her predator designation. The court has discretion to grant or deny the petition.

A predator's failure to register, provide required information, or failure to renew a driver's license or Florida identification card is a third degree felony. F.S. 775.21(9)(a).

Under F.S. 775.21(9)(b), a sexual predator who has been convicted of, or found to have committed, or has pled nolo contendere or guilty to (regardless of adjudication) any violation of F.S. 794.011(2), (3), (4), (5), or (8), or F.S. 794.023, F.S. 800.04, F.S. 827.071, F.S. 847.0133, or F.S. 847.0145, or a similar law, when the victim was a minor, is prohibited from working as a volunteer or for compensation at locations where children regularly congregate.

VI. Who must notify the public and what must be included?

Once the Sheriff of the County and the Chief of Police of the Municipality are notified by FDLE of a sexual predator's presence, the Sheriff or Police Chief must notify the community. (See F.S. 775.21(7).) When the court has made a written finding that an offender is a sexual predator, all elected officials, public agencies and public employees are immune from liability for damages from releasing information regarding the predator as authorized by F.S. 775.21. (See F.S. 775.21(8).)

There is no "specified manner" to notify the community. The "publication" obligation for some predators has been eliminated. Notification is now in "any manner deemed appropriate" by the notifying agency head for all sexual offenders. FDLE will notify the public through its Internet page and

its toll free hotline number.

Information disseminated to the public MUST include: Name, description of the predator, photograph, address (if known), circumstances of the offense(s), and whether the victim was at the time of the offense a minor or an adult. (Note: The actual age of the minor victim should not be stated, nor should any sexual offense victim's name be revealed.)

VII What are the penalties for failing to register?

It is a third degree felony if a predator fails to register with FDLE, or fails to renew his or her driver's license or Florida identification card with the Department of Highway Safety and Motor Vehicles. See: F.S. 775.21(9)(a).

VIII How will local law enforcement agencies be notified?

FDLE will notify the sheriff, the state attorney, and if applicable, the chief of police of the community in which a predator resides within 48 hours of the predator's registration with FDLE. This will be accomplished via FCIC administrative messages. FDLE maintains on-line current information regarding each registered sexual predator and operates a sexual predator hotline access (1-888-357-7332 ("FL-PREDATOR")) that can be utilized by law enforcement agencies to obtain information for purposes of monitoring, tracking and prosecution. FDLE also maintains its current listing of sexual predators on its Internet web site, which can serve as an excellent resource for law enforcement agencies. Chiefs and sheriffs are encouraged to provide Internet access to their agency personnel involved in monitoring sexual offenders, as information changes daily and printed lists become outdated quickly.

IX. What if an agency determines registration records are inaccurate?

It is important that registration records be as accurate as possible. Many agencies will be routinely monitoring the predators and offenders in their communities. During the course of agency activity, it may be determined that an address or other information reflected in FDLE's records is not accurate. If you believe the predator intended to violate the registration requirements of the law, you should report the information to the state attorney of jurisdiction for consideration of prosecution.

If you believe a subject may have been wrongfully included on the list of sexual predators, contact FDLE and the matter will be carefully reviewed.

Any indications of inaccuracy or needed changes in FDLE's registration files should be reported to FDLE by the agency by calling FDLE at 1-888-357-7332. Should you determine that a predator is no longer at the address reflected in FDLE's records, try to determine a new address, but contact FDLE even if a new address for the predator is not known.

FDLE's Toll-Free Predator Registration Number is 1-888-FL-PREDATOR (357-7332)

SEXUAL OFFENDER PROCEDURES

The 1997 Legislature enacted new provisions requiring registration and permitting community notification regarding "sexual offenders." Not all "sexual offenders" are "sexual predators," so in determining what registration obligations apply, care must be exercised in evaluating the offender's criminal history. The sex offender provisions are primarily found in F.S. 943.0435.

I. Who is a sexual offender?

Any person convicted of committing, attempting, conspiring or soliciting to commit any of the following violations (or any offense committed in this state which has been redesignated from a former statute number, or analogous offenses in another jurisdiction):

- F.S. 787.025 (Luring or enticing a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose);
- Any Chapter 794 offense;
- F.S. 796.03 (Procuring a person under age of 18 for prostitution);
- F.S. 800.04 (Lewd, lascivious, or indecent assault or act upon or in presence of child under the age of 16 years);
- F.S. 827.071 (Sexual performance by a child of less than 18 years of age);
- F.S. 847.0133 (Distribution of obscene materials to minor under the age of 18);
- F.S. 847.0135 (Computer pornography involving minor);
- F.S. 847.0145 (Selling or buying of minors for sexually explicit conduct).

And who is released on or after October 1, 1997, from the sanction imposed by reason of conviction of his or her sexual offender offense.

NOTE: Sexual predator designations apply to offenses committed from October 1, 1993, forward. In contrast, the sexual offender definition applies to any listed offense, committed on any date, for which an offender is being "released on or after October 1, 1997, from the sanction imposed" for the offense. "A sanction imposed" includes, but is not limited to, fine, probation, community control, parole, conditional release, control release, or incarceration. "Conviction" means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld. (See F.S. 943.0435).

A sexual predator will also meet the "sexual offender" definition. When dealing with a sexual predator, the sexual predator registration and notification obligations supersede the sexual offender procedures. (See F.S. 943.0435(5).)

II. What are the sexual offender registration requirements?

A sexual offender **MUST** report in person to FDLE or the Sheriff **within 48 hours** of establishing permanent or temporary residence in the county. The information to be provided includes: Name, date of birth, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, address, date and place of conviction, description of the crime, photograph, and fingerprints. If the registration occurs at a sheriff's office, the information is to be forwarded to FDLE.

After an offender is no longer under the jurisdiction, control or supervision of the Department of Corrections (or private correctional facility) and subsequent to the initial registration made in person at a sheriff's office or at FDLE, the sexual offender must report in person at a driver's license office of the DHSMV within 48 hours after any change in the offender's permanent or temporary residence. The information provided to FDLE must be supplemented, and a digital photograph will be taken. The information is forwarded to FDLE. Sexual offenders must report in person to DHSMV when renewing a driver's license or Florida Identification Card, so that the registration information can be updated and

the identity of the offender can be verified. Costs of the DHSMV procedures are to be paid by the offender. Any "additional information" necessary to confirm the identity of a sex offender, including fingerprints, can be requested by DHSMV.

Failure by the offender to register with FDLE, or failure to maintain a current driver's license or Florida identification card with the Department of Highway Safety and Motor Vehicles is a third degree felony. F.S. 943.0435(6).

In addition, DOC will provide the following sexual offender information to FDLE as soon as it is available electronically in an FCIC-acceptable format: Name/alias, address, legal status of the offender (e.g. "On parole") and the name, location and telephone number of the supervising office (i.e. probation, parole, or conditional release), whether the victim was a minor, physical description of the offender, the sex offense convicted of, and a photograph taken within 60 days of termination of supervision or incarceration. DOC is immune from civil liability for providing this information. (See F.S. 944.607).

III. Who is entitled to notice of a sexual offender?

Six months prior to the release of a sexual offender from incarceration, DOC **must** provide to FDLE, the Sheriff of the county where offender was sentenced, the Sheriff of the county where offender plans to reside, and any person who requests the information the following: Name/alias, prison or jail from which the offender is released, Social Security number, race, sex, date of birth, height, weight, hair and eye color, date and county of sentence, the crime sentenced for, fingerprints, and a photograph (taken within 60 days of the anticipated release). DOC **may** provide other records, including criminal records, and personnel records.

Upon receipt of the above information, FDLE and/or the Sheriff or Police **Chief shall give the information to anyone who asks**, and **may unilaterally notify the community** in any manner they deem appropriate, unless the information is confidential or exempted from disclosure under Chapter 119. (Notification of the community is optional for sexual offenders. It is mandatory for sexual predators.)

An elected or appointed official, public agency or public employee is immune from liability for releasing information concerning offenders. DOC, FDLE, DHSMV are also immune from civil liability and all law enforcement agencies are given express permission to release sexual offender information to the public.

IV. What are the penalties for failing to register?

It is a third degree felony if an offender fails to register with FDLE, or fails to maintain a current driver's license with DHSMV. F.S. 943.0435(6).

V. FDLE Toll-Free Hotline

FDLE maintains a toll-free sexual offender hotline for the public to access information about sexual predators and offenders. FDLE will also furnish a copy of the photo of the offender upon request at a reasonable fee. FDLE and its personnel are immune from civil liability for damages for good-faith compliance with the reporting requirements and sexual offender law. The hotline number is 1-888-FL-PREDATOR (1-888-357-7332).

VI. How will local law enforcement be notified?

Inmate release information is sent to the agency directly from the Department of Corrections. Sex offender information will be available via FCIC as a "status file record." Agencies making status inquiries on a person who is a sex offender will receive current registration information as a result of that inquiry. Due to the volume of sex offenders required to register, *agencies will not be receiving direct notices of sex offender registration or address changes.* The information is available by county on the FDLE Internet web site or agencies may request, at any time, that FDLE provide them with a current listing of sex offenders FDLE's records show are residing within their jurisdiction. Chiefs and sheriffs are encouraged to provide Internet access to their agency personnel involved in monitoring sexual offenders, as information changes daily and printed lists become outdated quickly.

VII. What if an agency determines registration records are inaccurate?

It is important that registration records be as accurate as possible. During the course of agency activity, it may be determined that an address or other information reflected in FDLE's records is not accurate. If you believe the offender intended to violate the registration requirements of the law, you should report the information to the state attorney of jurisdiction for consideration of prosecution. **Any indications of inaccuracy or needed changes in FDLE's registration files should be reported to FDLE by the agency by calling FDLE at 1-888-357-7332. Should you determine that a registrant is no longer at the address reflected in FDLE's records, try to determine a new address, but contact FDLE even if a new address for the registrant is not known.**

If you believe a subject may have been wrongfully included on the sexual offender list, contact FDLE and the matter will be carefully reviewed.

COMMUNITY NOTIFICATION REGARDING ANY CRIMINAL OFFENDER

F.S. 943.046, effective 10/1/97, confirms that any state or local law enforcement agency may release to the public any public information regarding any criminal offender unless the information is otherwise confidential or exempt. ***Persons seeking a public record copy of one's Florida criminal history record must follow the method set out in F.S. 943.053, which requires them to secure the criminal history printout from FDLE upon payment of the authorized fee. They may call FDLE at (850) 410-8110 for information and assistance.***

Note To Readers From Agencies Other Than FDLE:

Your agency's legal counsel should be consulted for assistance in determining what policies and procedures will be implemented by your agency to comply with the 1997 Public Safety Information Act.

REVISED GENERAL FELON REGISTRATION PROCEDURES AND OBLIGATIONS

The general felon registration law (F.S. 775.13) has been revised to "refresh" felony registration records. Any person who has been convicted of a felony or any crime in another jurisdiction that would be a felony if committed in Florida must, unless otherwise excused by the act, register as a convicted felon. The revision indicates that any such person who is within any county as of October 1, 1997, must register with the Sheriff of the county (or FDLE) by no later than December 1, 1997. This provision applies to all general felons. Registration is NOT required if the offender has: (1) Had his or her civil rights restored; (2) Has received a full pardon for the offense for which convicted; (3) Has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than 5 years, and is not a fugitive from justice on a felony charge or has not been convicted of any offense since release from incarceration or other sentence or supervision. Registration is not required for offenders who are parolees or probationers under the United States

Parole Commission if the offenders' presence in Florida is approved, or if the offenders are under active federal probation supervision, or the offenders have been "lawfully discharged from such parole or probation."

Sexual predators who have registered as required by law are not required to register as felons. The law did not provide the same exemption for sexual offenders who register as required by law. However, this appears to be an oversight, since the sexual offender registration requirement is more demanding than the general felony registration. Failure to register as a general felon is a second degree misdemeanor.

This summary was prepared by FDLE Miami Regional Legal Advisor Jilliane Hoffman, FDLE General Counsel Michael Ramage, and FDLE Criminal Justice Information Services Director Donna Uzzell.

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