

98-02: Guidelines to Florida Sex Offender Laws

December 18, 1998

Introduction

On October 1st, 1997, Florida's Public Safety Information Act went into effect. This act responded to the federal Wetterling Act designed to help both law enforcement and the public by increasing the awareness of criminal offenders, particularly sexual offenders. During the next several months Florida's criminal justice and corrections agencies worked cooperatively to implement the new legislation. This effort has already produced many documented cases of thwarting further sexual offenses against Florida's citizens and tourist populations. As with any new process, some issues came to light during these months of implementation that needed to be addressed to enhance the effectiveness of this public information process. These issues were addressed primarily through two pieces of legislation during the 1998 session. Senate Bill 1992 addressed many glitch issues in addition to bringing Florida into compliance with federally mandated legislation. House Bill 3737 allows for extra notification to schools and daycare facilities for the protection of children. These guidelines are offered as a reference tool for law enforcement and corrections personnel who are involved in the work of registering sexual offenders and predators, performing community notification, verifying addresses, and enforcing the Public Safety Information Act laws as they relate to sexual offenders and sexual predators in Florida. All of these provide for the enhanced protection of Florida's citizens, visitors and children.

1998 Legislative Changes

The 1998 Florida Legislature passed the following revisions and additions to the Florida Sexual Predator Act and the Public Safety Information Act in order to conform to federal requirements and further enhance the effectiveness of sexual predator and offender laws. (NOTE: These 1998 changes are also included in the summaries of the laws, procedures, and duties listed later in this article.)

To ensure all sexual predators and sexual offenders are identified through the Department of Highway Safety and Motor Vehicles (DHSMV) system the following Florida driver's license or ID card registration change was added.

- Within 48 hours after initial registration, whether the sexual offender/predator is released or under custody of the Department of Corrections (DC), he or she shall register in person and present proof of initial registration at a driver license office of the DHSMV to secure a Florida driver's license or ID card.
- The sexual offender/predator must also report to DHSMV within 48 hours any change of address or renewal of driver license or ID card.
- The failure of a sexual offender/predator to maintain, acquire or renew a driver's license or ID card, to submit to the taking of a digitized photograph, provide location information or by act or omission to comply with registration requirements, is a **third degree felony**.

Added Community Notification Requirement (Effective July 1, 1998)

- Within 48 hours upon notification by the Florida Department of Law Enforcement (FDLE) of the presence of a sexual predator, the sheriff of the county or the chief of police of

the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify each licensed day care center, elementary school, middle school and high school within a 1-mile radius of the residence of the sexual predator.

Local law enforcement's questions concerning registration of out of state offenders and duplication of registrations for sexual predators/offenders as convicted felons led to the following addition.

- 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 with requirements to register or be subjected to community or public notification in that state is required **to register as a sexual offender** in the state of Florida. Only when the person provides FDLE with a court order issued by the court that gave the designation as a sexual predator or sexual offender which removes the designation and provided further that the person does not meet the criteria for registration as a sexual predator or sexual offender in the state of Florida, will the person's requirement to register be removed.

Clarification of criminal felon registration regarding sexual predators and offenders

- A person who has registered as a sexual predator or sexual offender with FDLE or the local sheriff's office is exempt from registering as a convicted felon.

Clarification of residence and conviction terms

- A **temporary residence** is now defined as a place where the person abides, lodges, or resides for a period of 14 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, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.
- A **permanent residence** is a place where the person abides, lodges, or resides for 14 or more consecutive days.
- **Conviction:** With respect to a person's felony offense, a determination of guilt which is the result of a trial or entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

To provide for registration of sexual predators/offenders who are not under the control, care or custody of the Department of Corrections but under the custody of a local law enforcement facility or under federal supervision

Local Jail:

- If the sexual offender/predator is in the custody of a local jail, the custodian of the local jail shall register the sexual offender/predator and forward the registration information to FDLE. The custodian of the local jail shall also take a digitized photograph of the offender and forward the photo to FDLE.

Federal supervision:

- If the sexual offender/predator is under federal supervision, the federal agency responsible for supervising the sexual offender/predator may forward FDLE any information regarding the offender which is consistent with the information provided by the Department of Corrections and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by FDLE for purposes of public notification.

Administrative Probation Revised

- Effective for an offense committed on or after July 1, 1998, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145.

Mandated terms of probation or community control are now imposed for sexual predators/offenders who are under Department of Corrections custody or control. Conditions imposed under the sex offender laws for probationers or community controllees do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified.

Verifications of addresses of sexual predators and offenders by FDLE and the Department of Corrections (DC).

- **DC** shall verify addresses of sexual predators/offenders who are under supervision of DC and residing in the community.

- **FDLE** shall verify the addresses of sexual predators/offenders who are not under the care, custody or supervision of DC through quarterly residence verification sweeps for sexual predators and annual certified mailing address verifications for sexual offenders.

In order to accommodate Florida's growing tourist and mobile populations, residence verifications for mobile homes, houseboats, manufactured homes, trailers, and other vehicles were included in address requirements.

- Upon registering, if the sexual predator or sexual offender's place of residence is a motor vehicle, trailer, mobile home or manufactured home, the sexual predator/sexual offender shall provide to FDLE or the sheriff's office a written notice of the vehicle identification number, the license tag number, the registration number, and a description, including color scheme of the motor vehicle, trailer, mobile home or manufactured home. If the sexual offender/predator's residence is a vessel, live-aboard vessel, or houseboat, the offender shall provide to FDLE or the sheriff's department written notice of the hull identification number, the manufacturer's serial number, the name of the vessel, live-aboard vessel, or houseboat; the registration number, and a description including color scheme.

Sexual Offender/Predator Designations:

- A sexual predator who was designated a sexual predator by a court before October 1, 1998 and who has been lawfully released from confinement, supervision or sanction for 10 years and has not been arrested for any felony or misdemeanor since release, may petition the court for removal of the designation. A sexual predator or sexual offender who was designated by a court on or after October 1, 1998, and released from supervision or confinement for at least 20 years and has not been arrested for any felony or misdemeanor offense since release, may petition the court for removal of the sexual offender/predator designation.

Added Florida Statute Criteria for Sexual Predator Status Designations

- A capital, life or first-degree felony violation of s.787.01 or s.787.02 (kidnapping of a child under 13 and false imprisonment of a child under 13) where the victim is a minor and the defendant is not the victim's parent.
- Any attempt to commit a capital, life or first-degree felony violation of chapter 794, where the victim is a minor or a violation of a similar law of another jurisdiction.
- Any second-degree or greater felony violation of s. 787.01 or 787.02 where the victim is a minor and the defendant is not the victim's parent.

- Any second-degree or greater felony violation of s.796.03, procuring a person under the age of 18 for prostitution.
- Any second-degree or greater felony violation of s.825.1025 (2)(b) lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Or a violation of a similar law of another jurisdiction.

Immunity from Civil Liability:

- In regard to registered sexual predators and sexual offenders, an elected or appointed official, public employee, school administrator or employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for any damages resulting from the release of information under s.944.607.

Misuse of Public Records:

- Any person who misuses or alters public record information relating to a sexual offender/predator including information displayed by law enforcement agencies on web sites, commits a first-degree misdemeanor.

With a considerable number of sexual offenders moving from state to state, a method of keeping track of offenders was addressed in this revision.

- A sexual predator or sexual offender who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or FDLE within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The notification must include the address, municipality, county, and state of intended residence. The sheriff shall notify FDLE of the information received. FDLE shall notify the statewide law enforcement agency or comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. If the sexual predator or offender later decides to remain in this state, he/she shall within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, notify the sheriff or FDLE, whichever agency the predator initially reported the intended change of residence, of his or her intent to remain in this state. Failure to report intent to remain in the state of Florida is a **second-degree felony**.

The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act. (Chapter 98-84; CS/HB 3327).

This law amends Chapter 916, Florida Statutes, to address a "small but extremely dangerous number of sexually violent predators...who do not have a mental disease or defect that renders them appropriate for involuntary treatment under the Baker Act..." and who are not good candidates for treatment that would allow them to return safely to the communities. It creates a civil commitment procedure for the long-term care and treatment of sexually violent predators. The law establishes a procedure by which the state attorney can seek to have a sexually violent predator committed in a Children and Family Services facility until such time as the predator is no longer a threat to the public at large if released. The facts supporting such a classification and determination must be proven beyond a reasonable doubt at a trial that can, upon demand, be a six-person jury trial. A yearly review of a committed predator's mental status is mandated and a subject may petition the court for a review of his or her status in order to seek release. Notification of the victim or victim's next-of-kin must be made whenever any committed sexually violent predator is to be released. Specific procedures and options are spelled out law. The law is effective on January 1, 1999.

Notification of Presence of Sexual Predator. (Chapter 98-267; HB 3737).

Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. This law was effective July 1, 1998.

SEXUAL PREDATORS

Qualifications/Obligations

What Constitutes a Sexual Predator?

There are two paths of qualifying as a sexual predator in the state of Florida: One way is to commit (on or after October 1, 1993) one of the several "one is enough" sexual predator offenses. The second is to commit a "second strike" sexual predator offense (on or after October 1, 1993) after having previously been found to have committed one or more of certain other listed sexual offenses.

In either instance, a written finding designating the qualifying individual as a "sexual predator" must be issued from the court to establish the designation of "Sexual Predator."

For purposes of determining qualifying offenses for sexual predator status, "conviction" means a determination of guilt, which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction in any state of the United States.

The "One is Enough"

Predator Qualifying Offense

A sexual predator is any person who has been convicted or is found to have committed, regardless of adjudication, or who plead nolo contendere or guilty to any of the following offenses which occurred **ON or AFTER October 1, 1993:**

1. Capital, Life, or First degree Felony	s. 787.01	Kidnapping of a child under the age of 13, aggravating circumstances. Where the victim is a minor and the defendant is not the victim's parent
	s. 787.02	False imprisonment of a child under the age of 13, aggravating circumstances. Where the victim is a minor and the defendant is not the victim's parent
	s. 794	Sexual Battery
	s. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
<u>Attempt</u> to commit a Capital, Life or First degree Felony	s.794	Sexual Battery Where the victim is a minor
Or Any violation of a similar law of another jurisdiction.		

The "Second Strike"

Predator Qualifying Offense

A sexual predator is any person who has been convicted or is found to have committed **On or After October 1, 1993** any offense, regardless of adjudication, or who pleas nolo contendere or guilty to any of these offenses *:

1. Second-degree or	s. 787.01	Kidnapping of a child
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greater Felony		under the age of 13, aggravating circumstances. Where the victim is a minor and the defendant is not the victim's parent
	s. 787.02	False imprisonment of a child under the age of 13, aggravating circumstances. Where the victim is a minor and the defendant is not the victim's parent
	s. 794	Sexual Battery
	s. 796.03	Procuring a person under the age of 18 for prostitution.
	s. 800.04	Lewd, lascivious, or indecent assault or act upon or in the presence of a child.
	s.825.1025(2)(b)	Lewd or lascivious battery upon an elderly person or disabled adult.
	s. 827.071	Child Abuse, employ, consent, promote, etc., sexual performance by a child.
s. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.	
Or A violation of a similar law of another jurisdiction		

***AND** the offender has **previously** been convicted of or found to have committed or has pled nolo contendere or guilty to, regardless of adjudication, any violation of:

787.01	Kidnapping of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
787.02	False imprisonment of a child under the age of 13, aggravating circumstances <i>Where the victim is a minor and the defendant is not the victim's parent.</i>
794.011 (2)	Sexual battery with injury child under 12 years of age.
794.011 (3)	Sexual battery upon person 12 or older with threats of deadly weapon or physical force.
794.011 (4)	Sexual battery on 12 year old or older (various circumstances).

794.011 (5)	Sexual battery upon 12 year old or older without serious personal injury.
794.011 (8)	Solicit or engage in sexual battery by person in familial or custodial authority on a person under 18.
794.023	Sexual Battery by multiple perpetrators.
796.03	Procuring person under 18 for prostitution.
800.04	Lewd, lascivious, or indecent assault or act upon or in the presence of a child.
825.1025	Lewd or lascivious battery upon an elderly person or disabled adult.
827.071	Child Abuse: employ, consent to, promote, etc., sexual performance by a child.
847.0133	Sell, give away etc. obscene material to a minor.
847.0135	Computer pornography.
847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
Or A violation of a similar law of another jurisdiction.	

Provided that:

- The Offender has not received, for the qualifying offense(s), a pardon for any felony or similar relief from another jurisdiction
- A conviction of the felony or similar law of another jurisdiction has not been set aside in any postconviction proceeding.
- In order to be counted as the prior offense, the felony must have resulted in a conviction sentenced separately, or adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it shall not be considered a prior felony if 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.

Sexual Predator Obligations

Sexual predators:

- Who have registered as required under s. 775.21 are exempt from convicted felon registration as defined by s. 775.13.
- Are subject to community and public notification.
- Must register with the Florida Department of Law enforcement (FDLE) (through the sheriff's office an FDLE office, the Department of Corrections, the custodian of a local jail or a federal supervision office) within 48 hours after establishing permanent or temporary residence in this state.

- Who are not incarcerated and who reside in the community (including those under the supervision of the Department of Corrections) must - within 48 hours of initial registration - present proof of initial registration as a predator in person at the DHSMV and secure or renew a driver's license or identification card.
- Must report in person any change in permanent or temporary residence to DHSMV within 48 hours.
- Must renew in person their driver's license or identification card when subject to renewal.
- Must report intent to establish residence in another state to the sheriff or FDLE within 48 hours before the date they intend to leave Florida.
- Who indicate their intent to reside in another state or jurisdiction and later decide to remain in this state must, within 48 hours after the date upon which they indicated they would leave this state, notify the sheriff or the department, whichever agency is the agency to which they reported the intended change of residence, of their intent to remain in this state. Failure to do so is a second-degree felony.
- Must maintain registration with the department for the duration of their life, unless they have had their civil rights restored, or have received a full pardon or have had a conviction set aside in a postconviction proceeding for any felony sex offense that met the criteria for the sexual predator designation.
- Who were designated a sexual predator by a court **before October 1, 1998**, and who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at **least 10 years** and have not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit in which they reside for the purpose of removing the sexual predator designation.
- Who were designated a sexual predator by a court on or **after October 1, 1998**, who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at **least 20 years**, and who have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court in the circuit in which they reside for the purpose of removing the sexual predator designation.
- Who are granted relief of their predator designation, unless specified in the order, must comply with the requirements for registration as sexual offenders and other requirements provided under s. 943.0435 or s. 944.607.
- Who obtain an order from the court that imposed the order designating them as a sexual predator which removes such designation, shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry.
- Who, except as otherwise specifically provided, fail to register or who fail, after registration, to maintain, acquire, or renew a driver's license or identification card or provide required location information, or who otherwise fail, by act or omission, to comply with the requirements of the Sexual

Predator Act, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- Who have been convicted of or found to have committed, or have pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, and who work, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

SEXUAL OFFENDERS

Qualifications/Obligations

What Constitutes an Offender?

A Sexual Offender is any person convicted* of committing, attempting, soliciting or conspiring to commit, any of the following violations (or any offense committed in this state which has been redesignated from a former statute number, or similar offenses in another jurisdiction): **AND Released on or after October 1, 1997 from the sanction** imposed for any conviction* of these offenses.**

Committing, Attempting, Soliciting, or Conspiring to commit	s. 787.01	Kidnapping of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent.</i>
	s. 787.02	False imprisonment of a child under the age of 13, aggravating circumstances. <i>Where the victim is a minor and the defendant is not the victim's parent.</i>
	s. 787.025	Luring or enticing a child.
	s. 794	Sexual Battery.
	s. 796.03	Procuring a person under 18 for prostitution.
	s. 800.04	Lewd, lascivious, or indecent assault or act upon or in the presence of a child.
	s. 825.1025	Lewd or lascivious battery upon an elderly person or disabled adult.
	s. 827.071	Child Abuse: employ, consent to, promote etc. sexual performance by a child.
s. 847.0133	Sell, give away etc. obscene material to a minor.	

	S. 847.0135	Computer pornography.
	S. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct.
Or similar offense committed in this state which has been redesignated from a former statute number to one of those listed.		

*****"Convicted"** means that, regarding the person's offense, there has been a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction in any state of the United States.

** A **sanction** in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

The 1997 Florida Legislature enacted provisions requiring registration and permitting community notification regarding "sex offenders." Not all "sex offenders" are "sexual predators", so in determining registration requirements, caution must be exercised in evaluating the offender's criminal history. Provisions for sexual offenders are found primarily in Florida Statute 943.0435.

Sexual Offender Obligations

Sexual Offenders:

- Who have registered as required under s. 943.0435 or s. 944.607 are exempt from convicted felon registration as defined by s. 775.13.
- Are subject to community and public notification.
- Must register with FDLE (through the sheriff's office, an FDLE office, the Department of Corrections, the custodian of a local jail or a federal supervision office) within 48 hours after establishing permanent or temporary residence in this state.
- Who are not incarcerated and who reside in the community (including those under the supervision of the Department of Corrections) must - within 48 hours of initial registration - present proof of initial registration as an offender in person at the DHSMV and secure or renew a driver's license or identification card.
- Must report in person any change in permanent or temporary residence to DHSMV within 48 hours.
- Renew in person their driver's license or identification card when subject to renewal.
- Must report intent to establish residence in another state to the sheriff or FDLE within 48 hours before the date they intend to leave Florida.
- Who indicate their intent to reside in another state or jurisdiction and later decide to remain in this state must, within 48 hours after the date upon which they indicated

they would leave this state, notify the sheriff or the department, whichever agency is the agency to which they reported the intended change of residence, of their intent to remain in this state. Failure to do so is a second-degree felony.

- **Who also meet all qualifying criteria for sexual predator, including a court finding, must register as a sexual predator as required under s.775.21.**
- Who do not comply with the requirements of offender registration laws commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- Must maintain registration with FDLE for the duration of their life, unless they have had their civil rights restored or have received a full pardon or have had a conviction set aside in a postconviction proceeding for any felony sex offense that meets the criteria for classifying them as a sexual offender for purposes of registration.
- Who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which they reside for the purpose of removing the requirement for registration as a sexual offender.
- Who provide FDLE a certified copy of a court's written finding or order that indicates that they are no longer required to comply with the requirements for registration as a sexual offender will be removed from classification as a sexual offender for purposes of registration.
- Who are designated a sexual predator, a sexually violent predator, or other sexual offender designation in another state or jurisdiction and establish a permanent or temporary residence in this state are subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until they provide FDLE with an order issued by the court that designated them a sexual predator, a sexually violent predator, or other sexual offender designation which states that such designation has been removed, and further provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state..

All sexual predators and offenders must register. Failure of a sexual predator or offender to register as required by law constitutes a third degree felony

Residence Definitions

- **"Permanent residence"** means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- **"Temporary residence"** means a place where the person abides, lodges, or resides for a period of 14 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, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Criminal Felon Registration

Sexual Offenders and Predators who have registered as required are exempt from felony criminal registration as outlined in s. 775.13(6)(e), 775.13(6)(f).

Sexual Offenders who are also sexual predators shall register as a sexual predator as required under s. 775.21.

After the court makes a determination that a **predator** meets the statutory criteria, the court submits its finding to FDLE and the Department of Corrections (if the offender is imprisoned). If FDLE, DC, or any law enforcement agency obtains information suggesting that an offender meets the criteria for a sexual predator, but has not been designated as one in writing by the court, the state attorney of the circuit in which the offender resides is to be notified, and the state attorney will seek a court hearing to obtain the written finding. (Florida Statute 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.)

Registration of Predators and Offenders through the Department of Corrections

Incarcerated: Sexual Predators who are incarcerated will provide registration materials to their custodian who will in turn supply them to FDLE for registration.

Probation, Community Control, Control Release, Parole etc.: Sexual Predators and Sexual Offenders on probation or some other form of controlled, non-incarcerated sanction shall supply registration materials to their supervising officer who shall forward these to FDLE.

Additionally these predators and offenders under non-incarcerated sanction shall report to the Department of Highway Safety and Motor Vehicles (DHSMV) within 48 hours of registration, report their status and show proof of registration as an offender/predator to DHSMV officials and obtain a driver's license or identification card which will be flagged within the DHSMV system. This information will in turn be forwarded by DHSMV to FDLE.

1. **Released from Incarceration or Sanction:** Upon outright release from incarceration or release from supervised sanction, a Sexual Predator or Sexual Offender must, within 48 hours of establishing permanent or temporary residence, report in person to either a FDLE office or to the sheriff of the county of his or her permanent or temporary residence and register.

Custody of a Local Jail: If the sexual offender/predator is in the custody of a local jail, the custodian of the local jail shall register the sexual offender/predator and forward the registration information to FDLE. The custodian of the local jail shall also take a digitized photograph of the sexual offender/predator while he or she remains in custody and shall provide the digitized photograph to FDLE.

Under Federal Supervision: If the sexual offender/predator is under federal supervision, the federal agency responsible for supervising the sexual offender/predator may forward to FDLE any information regarding the sexual offender/predator which is consistent with the registration information provided by the Department of Corrections for offenders/predators, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by FDLE and law enforcement for purposes of public notification.

Change of Address Process

After initial registration, all non-incarcerated Sexual Predators and Offenders must notify the DHSMV within 48 hours of any change of residence. Should the predator or offender be under sanction they must also report their change of address, as required by law, to their supervisor who will in turn notify FDLE.

DHSMV will notify FDLE of the change of address information and changes will be posted to the Internet site. The Sheriff's office and all police departments within the county will be notified via FCIC AM message of all new predator and offender addresses within their county. Additionally, law enforcement agencies of jurisdiction will be notified of any new Predator addresses within their county by fax and mail. Agencies should regularly access the FDLE sexual offender/predator site via CJNET or the Internet at www.fdle.state.fl.us to obtain current listings of all sexual offenders. Agencies may also contact FDLE's Sexual Offender/Predator Unit for offender information at 1(888) 357-7332.

Moving Out of State: A sexual predator or offender who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or FDLE within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction.

The sheriff shall *promptly* provide to FDLE the information received from the sexual predator/offender. FDLE will then notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence.

The failure of a sexual offender/predator to provide his or her intended place of residence is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A sexual predator or offender who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender/predator indicated he or she would leave this state, notify the sheriff or FDLE, whichever agency is the agency to which the sexual offender/predator reported the intended change of residence, of his or her intent to remain in this state. If the sheriff is notified by the sexual offender/predator that he or she intends to remain in this state, the sheriff shall promptly report this information to FDLE. **A sexual predator or offender who reports his or her intent to reside in another state or jurisdiction, but who remains in this state without reporting to the sheriff or FDLE in this manner, commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.**

Out of State Offenders

Any 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 with requirements to register or be subjected to community or public notification in that state is required to register as a sexual offender in the state of Florida.

(Note: If an offender enters Florida with out-of-state convictions that are similar to Florida's sexual predator criteria offenses, the state attorney in the jurisdiction in which the offender establishes or maintains a permanent or temporary residence can initiate a court hearing to review the out-of-state offenses and to determine whether the offender will be classified as a sexual predator under Florida law.)

Juvenile Offenders

Juvenile offenders who are treated as adults can qualify as sexual predators or offenders based on the criteria for each classification. Any offense for which an offender was adjudicated delinquent *shall not* be considered as a qualifying criteria offense for sexual predator or offender status except that, in the case of a sexual predator, a qualifying prior (predicate) offense which resulted in an adjudication of delinquency may be counted provided the current offense resulted in an adult or treat as an adult adjudication.

Law Enforcement Duties

Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police.

Notification of Presence of Sexual Predator. (Chapter 98-267; House Bill 3737).

Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Effective July 1, 1998.

Information provided to the community and the public regarding a sexual predator must include:

- The name of the sexual predator;
- A description of the sexual predator, including a photograph;
- The sexual predator's current address, including the name of the county or municipality if known;
- The circumstances of the sexual predator's offense or offenses; and
- Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

These requirements do not authorize the release of the name of any victim of the sexual predator.

If a sexual offender or predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender/predator and forward the photographs and fingerprints to the department, along with the other registration information that the offender/predator is required to provide.

The sheriff or the police chief may coordinate the community and public notification efforts with the department.

If a sexual offender/predator notifies the sheriff of intent to establish residence in another state or the intent to remain in this state after previously reporting intent to leave, the sheriff shall *promptly* provide to FDLE the information received from the sexual offender/predator. FDLE shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender/predator's intended residence

Statewide notification of a sexual offender/predator to the public is authorized, as deemed appropriate by local law enforcement personnel and FDLE.

FDLE

The department shall notify the public of all designated sexual predators through the Internet.

If the sexual predator initially registers at an office of the department, the department must notify the sheriff and the state attorney of the county and, if applicable, the police chief of the municipality, where the sexual predator maintains a residence within 48 hours after the sexual predator registers with the department.

The department is responsible for the on-line maintenance of current information regarding each registered sexual predator.

FDLE must maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution.

FDLE shall verify the address of each sexual offender/predator who is not under the care, custody or supervision of the Department of Corrections in compliance with federal legislation requirements.

The department's sexual predator registration list is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose.

FDLE shall notify the statewide law enforcement agency, or a comparable agency, in any intended state or jurisdiction of residence of a sexual offender/predator.

Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and FDLE.

When FDLE provides information regarding a registered sexual offender/predator to the public, department personnel must advise the person making the inquiry that;

- positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and
- it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

FDLE may notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

FDLE shall provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual offenders and may provide other information reported to the department, which is not exempt from public disclosure.

FDLE shall provide to any person, upon request and at a reasonable cost determined by the department, a copy of the photograph of any sexual offender or sexual predator which the department maintains in its files and a printed summary of the information that is available to the public under this section.

Courts, Clerk of the Courts & State's Attorney Duties

F. S. 775.25. Prosecutions for acts or omissions.--A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator or sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

The clerk of the court of that court which convicted and sentenced the sexual offender/predator for the qualifying offense or offenses shall forward to DC and FDLE a certified copy of any order entered by the court imposing any special condition or restriction on the sexual offender/predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors. The Department of Law Enforcement may include on its Internet site such special conditions or restrictions.

If a sexual offender is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual offender's fingerprints are taken and forwarded to the department within 48 hours after the court sentences the offender. The fingerprint card shall be clearly marked "Sexual Offender Registration Card."

For an offender who meets the sexual predator criteria and is before the court for sentencing for a current (qualifying) offense committed on or after October 1, 1996, where the sentencing court makes a written finding at the time of sentencing that the offender is a sexual predator, the clerk of the court shall transmit a copy of the order containing the written finding to FDLE within 48 hours after the entry of the order.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements. Within 48 hours of the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to FDLE. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

If a sexual predator is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual predator's fingerprints are taken and forwarded to FDLE within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card."

If the Department of Corrections, FDLE, or any other law enforcement agency obtains information which indicates that an offender **who establishes or maintains a permanent or temporary residence in this state** meets the sexual predator criteria because the offender committed a similar violation in another jurisdiction on or after October 1, 1996, the Department of Corrections, FDLE, or

the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

If the Department of Corrections, FDLE, or any other law enforcement agency obtains information which indicates that **an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator**, the Department of Corrections, FDLE, or the law enforcement agency shall notify the state attorney who prosecuted the offense for in state offenders, or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, FDLE, or any other law enforcement agency shall not register a sexual predator without a written finding from the court that the offender is a sexual predator.

Local Jail Duties

If the sexual offender/predator is in the custody of a local jail, the custodian of the local jail shall register the sexual offender/predator and forward the registration information to FDLE. The custodian of the local jail shall also take a digitized photograph of the sexual offender/predator while the sexual offender/predator remains in custody and shall provide the digitized photograph to FDLE.

Federal Supervision Offices Duties

If the sexual offender/predator is under federal supervision, the federal agency responsible for supervising the sexual offender/predator may forward to FDLE any information regarding the sexual offender/predator which is consistent with the information provided by the Department of Corrections and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by FDLE for purposes of public notification.

MISCELLANEOUS RESTRICTIONS

Sexual Predator Work/Volunteer Criminal Violation

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 s. 794.011(2), (3), (4), (5), or (8), s. 794.023, s. 800.04, s. 827.071, s. 847.0133, or s. 847.0145, or of a similar law of another jurisdiction, when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a **felony of the third degree**, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Administrative Probation

Under s. 948.01, effective for an offense committed on or after July 1, 1998, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in: s. 787.01 or s. 787.02,

where the victim is a minor and the defendant is not the victim's parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145.

Probation Restrictions

F.S. 948.03 Terms and conditions of probation or community control.

Certain conditions imposed *do not require oral pronouncement* at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this subsection. Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for violations of chapter 794 or s. 800.04, s. 827.071, or s. 847.0145, the court must impose the following conditions in addition to all other standard and special conditions imposed:

- A mandatory curfew from 10 p.m. to 6 a.m. The court may designate another 8-hour period if the offender's employment precludes the above-specified time, and such alternative is recommended by the Department of Corrections. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.
- If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the court.
- Active participation in and successful completion of a sex offender treatment program with therapists specifically trained to treat sex offenders, at the probationer's or community controllee's own expense. If a specially trained therapist is not available within a 50-mile radius of the probationer's or community controllee's residence, the offender shall participate in other appropriate therapy.
- A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.
- If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on contact with a child under the age of 18 without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court, unless authorized by the sentencing court.
- If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate.
- Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.
- A requirement that the probationer or community controllee must submit two specimens of blood to the Florida

Department of Law Enforcement to be registered with the DNA data bank.

- A requirement that the probationer or community controllee make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.
- Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

Effective for a probationer or community controllee whose crime was committed on or after October 1, 1997, and who is placed on sex offender probation for a violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, in addition to any other provision, the court must impose the following conditions of probation or community control:

- As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, where available, and shall be paid by the sex offender. The results of the polygraph examination shall not be used as evidence in court to prove that a violation of community supervision has occurred.
- Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.
- A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.
- If there was sexual contact, a submission to, at the probationer's or community controllee's expense, an HIV test with the results to be released to the victim and/or the victim's parent or guardian.
- Electronic monitoring when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections.

COMMUNITY NOTIFICATION

Community notification regarding registered sexual predators is mandatory and the responsibility of the Sheriff and Chief of Police of the jurisdiction where the sexual predator temporarily or permanently resides.

Community notification regarding registered sexual offenders is authorized but not mandatory.

IMMUNITY.

When the court has made a written finding that an offender is a sexual predator, an elected or appointed official, public employee, school administrator or employee, agency, or any individual or

entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages resulting from the release of information.

The Department of Corrections, the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, personnel of those departments, and any individual or entity acting at the request or upon the direction of those departments are immune from civil liability for damages for good-faith compliance with sexual offender and predator laws, and shall be presumed to have acted in good-faith in compiling, recording, reporting, or providing information. The presumption of good-faith is not overcome if technical or clerical errors are made by the DC, DHSMV, FDLE, personnel of those departments, or any individual or entity acting at the request or upon the direction of those departments in compiling, recording, reporting, or providing information, or, if the information is incomplete or incorrect because the information has not been provided by a person or agency required to provide the information, or because the information was not reported or was falsely reported.

Misuse and Falsification of Information

Any person who misuses public records information relating to a sexual predator or a sexual offender, as to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on web sites or provided through other means of communication, commits a **misdemeanor of the first-degree**, punishable as provided in s. 775.082 or s. 775.083.

1. **Services For The Public**

FDLE will make information on sexual predators and sexual offenders readily available to the public by:

- posting the predators/offenders and their photographs on the Internet,
- by maintaining a toll-free telephone line for the public to use to inquire whether an individual is a sexual predator or sexual offender, and
- by making informational flyers and brochures on sexual predators and sexual offenders available to the public.

Florida Department of Law Enforcement

Sexual Offender/Predator Unit

P.O. Box 1489

Tallahassee, FL 32302-1489

www.fdle.state.fl.us

1-888-FL Predator

(1-888-357-7332)