

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE, STATE OF FLORIDA**

STATE OF FLORIDA,

Plaintiff

CASE NO.: 48-1995-CF-10355-O

v.

PATRICK CLARK,

Defendant.

_____ /

MOTION TO RULE

COMES NOW Defendant, PATRICK CLARK, by and through the undersigned counsel and pursuant to Rule 2.215(f) and 2.250(a)(4) of the Florida Rules of Judicial Administration and hereby moves this Court to hear and rule on Defendant's pending Verified Motion for Post-Conviction Relief brought pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. In support of this motion, the Defendant states, as follows:

1. On October 20, 2010, Defendant filed and served a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. A copy of the original motion is attached hereto as **Exhibit A**.

2. Defendant filed an amended motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure on November 3, 2010. A copy of the amended motion is attached hereto as **Exhibit B**.

3. On December 5, 2011, this Court issued an order directing the State to file a response to the Rule 3.850 motion. A copy of the December 5, 2011 order is attached hereto as **Exhibit C**.

4. On January 4, 2012, the State filed a motion to remove the court file to permit the State to inspect and copy the file to prepare a response to the Rule 3.850 motion. A copy of the State's January 4, 2012 motion is attached hereto as **Exhibit D**.

5. This Court granted the State's motion and issued an order dated January 11, 2012 to that effect. A copy of the January 11, 2012 order is attached hereto as **Exhibit E**.

6. The State filed and served a response to the Rule 3.850 motion on January 31, 2012. A copy of the State's response is attached hereto as **Exhibit F**.

7. Thereafter, this office sent the Court a courtesy copy of the Rule 3.850 motion on March 13, 2013 and requested this Court rule on the motion. A copy of the March 13, 2013 letter is attached hereto as **Exhibit G**.

8. This office has inquired about the status of the motion and requested a hearing on several occasions. This Court has not yet ruled on the motion. In the interim, the Defendant suffers from the consequences of this conviction, including the sex offender reporting requirement that is the substance of this motion.

WHEREFORE, the Defendant respectfully requests that this Court rule upon the Rule 3.850 motion.

Dated: Winter Park, Florida
August 19, 20

Respectfully submitted,



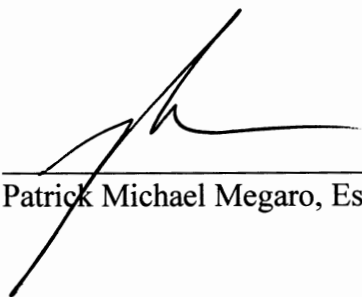
Patrick Michael Megaro, Esq.
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patrick@brownstonelaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S.

Mail on August 19, 2013 to:

Chris A. Lerner, Esq.
Office of the State Attorney
415 N. Orange Avenue
Orlando, Florida 32801



Patrick Michael Megaro, Esq.

EXHIBIT A

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 95-CF-0010355

v.

PATRICK CLARK,

Defendant.

DEFENDANT'S VERIFIED MOTION FOR POST-CONVICTION RELIEF

COMES NOW the Defendant, PATRICK CLARK, by and through the undersigned counsel and pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure and Chapter 86, Florida Statutes, and hereby moves this Court to vacate, set aside or correct the sentence delivered in this matter and, in support thereof, states the following:

PRELIMINARY STATEMENT

1. In this Motion, the Defendant, PATRICK CLARK will be referred to as, "Clark" or "Defendant".
2. The Plaintiff, the State of Florida, will be referred to as, the "State."
3. The trial judge presiding over the plea and sentencing hearing in this matter will be referred to as, the "Trial Court."
4. The assistant public defender appointed to represent the Defendant will be referred to as, "Defense Counsel."
5. Citations to the trial transcripts of the three-day jury trial in this cause will be indicated by the letter, "T," followed by the appropriate volume and page number.
6. Defendant's Sworn Affidavit is attached hereto as Exhibit "A" and incorporated herein.

7. The Plea & Sentencing Hearing no longer exists.
8. A copy of the Florida Department of Law Enforcement ("FDLE") Sexual Offender Notification Letter to the Defendant is attached hereto as Exhibit "B".
9. A copy of Chapter 98-81 is attached hereto as Exhibit "C" (the "Bill"). The Bill also provides that a person who has entered a plea of no contest and has received a withhold of adjudication is convicted within the meaning of § 943.0345 Florida Statute, relating to registration of a sexual offender.
10. A copy of the FDLE Sex Offender Registry website regarding the Defendant is attached hereto as Exhibit "D".
11. This is an action pursuant to § 86.021 of the Florida Statutes.
12. This court has jurisdiction over this matter pursuant to Section 26.021 of the Florida Statutes.
13. The Defendant has filed no other previous Motion for Post-Conviction Relief in this cause.
14. There are no appeals pending which would make adjudication of the claims set forth herein moot or not ripe for review.

STATEMENT OF THE CASE AND FACTS

15. On or about August 31, 1995, the State of Florida, by way of an Information, charged the Defendant with the following:

a. Count I: Lewd and Lacivious Act, pursuant to §800.04(1).

16. On or about February 29, 1996, the Defendant entered a *plea of no contest* to Count I.

17. The Court entered a withhold of adjudication.

18. On February 29, 1996, the Trial Court sentenced the Defendant to two (2) years administrative probation.

A. **FDLE Sexual Offender Notification Letter to the Defendant dated July 10, 2000 (“FDLE Letter”)**.

19. According to the FDLE Letter:

a. The Defendant must now register as a sexual offender and abide by the registration requirement of Florida Statutes 943.0435.

b. As a result, the Defendant is now listed on the FDLE Sex Offender Registry website and must comply with all sex offender registration requirements.

B. **Defendant’s Allegations Set Forth in Affidavit.**

20. The Defendant’s Affidavit states the following:

a. That the Agreement the Defendant maintained with the Prosecution is that he would not be registered as a sex offender, as the sex offender registry did not exist.

b. The Defendant accepted the Plea because the State Attorney and Defense Attorney informed him that he would not be a sex offender, as the laws regarding sex offender were not enacted in 1996.

- c. That the Defendant could get the charge expunged.
- d. When the Defendant was released from prison, the Defendant's probation officer informed him that he was required to report to the FDLE.
- e. During July 2000, the Defendant received a letter stating he was to be placed on the FDLE Sex Offender Registry.
- f. The Defendant was released from probation on February 29, 1998, exactly 2 years after his plea of no contest.
- g. The Defendant successfully completed all probation sanctions on or before February 29, 1998.
- h. The FDLE and State of Florida never informed the Defendant that he was required to register as a sex offender on or after October 1, 1997 or on or after July 1, 1998.

(See, Affidavit, Ex. A, pp. 1-3).

C. Florida Statute §943.0435, Florida Statutes (1998).

21. The FDLE specifically exempted persons entering a plea of no contest from the registration requirements of §943.0435, Florida Statutes (1998).

22. § 943.0435, Florida Statutes (1998) states:

(1) As used in this section, the term:

(a) "Sex offender" means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: s.787.025, chapter 794, s.796.03, s.800.04, s.827.071, s.847.0133, s.847.0135, s.847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) “Convicted” means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld. (Emphasis Added).

23. § 943.0435, Florida Statutes (1998) excludes persons that enter a plea of no contest from the registration requirements imposed by the FDLE.

D. Florida Statute §943.0435, Florida Statutes (2009).

24. In 1999, the exemption for persons entering a plea of no contest was removed and such persons were no obligated to conform to the registration requirements of §943.0435, Florida Statute (1999).

25. § 943.0435, Florida Statutes (1999) states:

(1) As used in this section, the term:

(a) “Sexual offender” means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: 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; s.827.071; s.847.0133; s.847.0135; s.847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) "Convicted" means that, regarding the person's offense, there has been a determination of guilt as a 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.

26. The 1999 section includes an amendment to correct an error in the sexual offender criteria that are listed in § 943.0435, Florida Statutes.

27. Prior to 1999, a person who enters a plea of no contest and receives a withhold of adjudication is excepted from designation as a sexual offender.

28. The new law took effect on July 1, 1998.

29. The Defendants probation terminated on February 29, 1998.

E. Chapter 98-81.

30. Section 7 of the Bill changes the Definition of conviction to include persons entering a plea of no contest and who receive a withhold of adjudication. (See, Bill p.19).

31. The sexual offender statutes at that time specifically excluded subsection §943.0435, Florida Statutes persons entering a plea of no contest from the requirement to register because such persons were not considered "convicted".

32. As set forth in Section 17 of the Bill, the law did not become effective until July 1, 1998.

F. Plea Hearing Colloquy.

33. During the Plea Hearing, the State and Defense agreed that the Defendant would not be placed on the sex offender registry, as this designation was not contemplated at the point of the Plea.

34. This agreement induced the Defendant to enter a plea. (See, Sentencing Hearing).

35. For the reasons that follow, this Court should vacate, set aside or correct the final judgment and sentence delivered in this matter.

ARGUMENT

I. DECLARATORY JUDGMENT.

WHEN THE DEFENDANT ENTERED HIS PLEA TO SECTION 800.04(1) FLORIDA STATUTES (1995), HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435, FLORIDA STATUTES (1998).

A. Introduction.

36. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

37. Specifically, the Defendant contends that, because adjudication was withheld on his prior offenses after he entered a plea of nolo contendere, he was not convicted and, therefore, is not a sexual offender who is required to register under section 943.0435, Florida Statutes (1998).

38. During 2000, the FLDE permanently placed the Defendant on the Sex Offender Registry.

39. When the Defendant entered a plea of no contest and received a withhold of adjudication to §800.04(1) he was not required to register as sex offender under §943.0435.

40. The Defendant is now permanently registered as a sex offender.

41. Therefore there is serious doubt as to whether the provision of §943.0435 (1998) apply to the Defendant.

42. The Defendant contends that §943.0435 exempt the Defendant from the registration requirements as he was not convicted within the meaning of §943.0435, Florida Statutes (1998).

43. The Defendant further contends that the required convictions necessary in order to impose the registration requirements on the Defendant cannot be supported by the record.

B. Analysis.

44. Section 943.0435, Florida Statutes, entitled “Sex offenders required to report to the department; penalty,” was enacted in 1997 and provided in pertinent part:

(1) As used in this section, the term:

(a) “Sex offender” means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: s.787.025, chapter 794, s.796.03, s.800.04, s.827.071, s.847.0133, s.847.0135, s.847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) “Convicted” means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.

(Emphasis added).

45. On July 1, 1998, *after the Defendant’s probation ended*, section 943.0435(1)(b) had been amended to read:

(b) “Convicted” means that, regarding the person's offense, there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Thereafter, in 2008 FN1, when Price was charged with failure of a sex offender to properly register, section 943.0435(1)(b) provided:

(b) “Convicted” means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section....

46. Under the 1997 language of section 943.0435, “convicted” for purposes of sex offender registry **did not** include entry of a plea of nolo contendere, regardless of whether adjudication was withheld.¹

47. Under the 1998 language of section 943.0435, “convicted” for purposes of sex offender registry included entry of a plea of nolo contendere, regardless of whether adjudication was withheld.

48. However, based upon the record, the Defendant indisputably does not meet the language applicable under the 1998 version of section 943.0435 to be a sex offender who was required to register.

49. The Defendant relies on the fact that the language of the 1997 version of section 943.0435 does not mention a plea of nolo contendere where adjudication was withheld under the definition of “convicted.” Rather, it provides: “‘Convicted’ means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.”

50. The fact that the Defendant does not meet the criteria under the 1998 version of section 943.0435 is controlling because the sex offender registry requirements commenced after the Defendant’s probation ended in 1998. *See, e.g., Cella v. State*, 831 So.2d 716 (Fla. 5th DCA 2002); *St. Lawrence v. State*, 785 So.2d 728, 730 (Fla. 5th DCA 2001).

WHEREFORE, the Defendant, PATRICK CLARK, respectfully asks this Court to determine that §800.04(1) Florida Statutes (1995) does not require the Defendant to register as a

¹ Under Section 921.0021, Florida Statutes (1997), the term conviction did not include a person entering a plea of no contest and receiving a withhold of adjudication until October 1, 1998; See also, Chapter 97-194: “‘The Florida Criminal Punishment Code, consisting of sections 921.002-921.0026, Florida Statutes, is established effective October 1, 1998, and applies to any felony committed on or after that date.’”

sex offender under §943.0435, Florida Statutes (1998) as the Defendant was not convicted within the meaning of §943.0435, Florida Statutes (1998).

II. EX POST FACTO.

APPLICATION OF SECTION 943.0435, FLORIDA STATUTES (1998) TO THE DEFENDANT VIOLATES THE EX POST FACTO CLAUSE.

51. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

52. This is an action for declaratory judgment based upon a violation of Plaintiff's U.S. and Florida Constitutional Rights respectively, which forbid illegal retroactive sentence enhancements as *ex post facto* violations.

53. Both the Florida and United States constitutions make it unconstitutional for lawmakers to enact laws that increase the punishment for a criminal offense after the crime has been committed. *See* U.S. Const., Art. I, § 9, cl. 3; U.S. Const. Art. I § 10, cl. 1; Fla. Const. Art. I, § 10.

54. The ban on *ex post facto* legislation applies only to criminal laws and proceedings; however, a civil remedy can be so punitive in either purpose or effect as to be deemed criminal and subject to *ex post facto* principles.

55. This is the problem that arises in the present case.

56. At the Plea, Defendant stated he had bargained for anonymity in exchange for his plea.

57. He alleges that the Prosecutor promised him he would not be a sex offender or be placed on the sex offender registry if he entered the plea to §800.04(1) Florida Statute (1995).

58. The FLDE has taken it upon its own accord to apply the sex offender registration requirements against the Defendant for the purpose of penalty enhancement without ever providing proper and timely notice to the Defendant.

59. A permanent placement of the Defendant on the sex offender registry is a penalty.

60. A statutory change operates retrospectively and is a constitutional *ex post facto* violation when it applies to convicted offenders whose crimes were committed prior to the statute's effective date.

61. Applying these principles to the Defendant's case, the FDLE is currently applying sentencing and punishment to an offense that was committed prior to the current statute's effective date.

62. This type of retroactive application of a statute is an illegal sentence enhancement and punishment in the Defendant's case because it alters the definition of criminal conduct and increases the length of the Defendant's sentence.

63. The application of the statute in this manner subjects the Defendant to a mandatory criminal penalty for a conviction that does not require registration.

64. The retroactive application of the conviction provisions of the statute in this manner violates ex post facto prohibitions.

65. In *Wiita v. State*, 744 So.2d 1232 (Fla. 4th DCA 1999), the plaintiff filed a motion to vacate his sentence and/or preclude his compliance with section 943.0435, Florida Statutes (1997).

66. Wiita claimed that, because section 943.0435 was not in effect at the time he entered his plea agreement, the reporting and publication requirements of the statute were neither contemplated nor made a part of his plea agreement. Based upon these facts, Wiita argued good cause existed to vacate his plea because it was not entered knowingly or voluntarily.

67. The trial court found that Wiita did not enter his guilty plea with an understanding of the full consequences of the plea. Thus, the trial court held Wiita's plea was not freely and voluntarily entered. The Trial Court granted the plaintiff's motion, which also stated that Wiita was no longer subject to the provisions of section 943.0435.²

² Since Wiita did not preserve the issue at the Trial Court, the Appellate Court did not address such issue on appeal.

68. At the time of the Defendant's offense, Florida law, as set forth in §943.0435(1)(b), Florida Statutes (1998), did not require a mandatory sex offender registration for entering a plea of no contest to §800.04(1), Florida Statutes.

69. The Defendant challenges the imposition and application by the FLDE of the sex offender laws in this manner as a violation of the *Ex Post Facto Clause*.

70. At the time the Defendant committed the offense, §943.0435, Florida Statutes (1998) did not provide a plea of no contest to §800.04, Florida Statutes constitutes an offense which makes sex offender registration mandatory.

71. According to the Chapter 98-91 the effective date of the Florida Legislature's amendment to §943.0435, Florida Statutes (1998) is July 1, 1998, months after the Defendant was removed from supervision or removed from sanctions.

72. Therefore, the amended language mandating sex offender registration for a violation of §800.04(1), Florida Statutes did not apply at the time the Defendant committed the offense prior to July 1, 1998.

73. The consequence of this is that any imposition of the statute in a manner that classifies the Defendant's offense as an offense, mandating sex offender registration, is a violation of the *Ex Post Facto Clause*.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests of this Court a judgment declaring the permanent placement of the Defendant on the sex offender registry to be invalid.

III. **DECLARATORY JUDGMENT.**

THE DEFENDANT'S DUE PROCESS RIGHTS ARE VIOLATED BECAUSE HE IS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435, FLORIDA STATUTE (1998).

74. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

75. This is an action for declaratory judgment based upon a violation of the Defendant's Due Process Rights under the Constitution of the State of Florida, Article I, Section 9.

76. During 2000, the FLDE permanently placed the Defendant on the Sex Offender Registry.

77. The failure of the FDLE to give proper notice or undertake to contact the Defendant of the FLDE's intention to place the Defendant on the sex offender registry deprived the Defendant of:

- i. a fair hearing on these disputed issues,
- ii. a meaningful opportunity to be heard,
- iii. an opportunity to raise a meaningful defense.

78. Article I, Section 9 of the Florida Constitution provides "That no person shall be deprived of life, liberty or property without the due process of law."

79. The denial of FLDE to give proper notification to the Defendant deprived him of the opportunity to challenge, contradict or rebut the evidence that the FLDE relied upon in order to permanently place the Defendant on the sex offender registry.

80. Here, the Defendant was convicted of a crime that did not require him to register as a sex offender.

81. In *Robinson v. Satz*, 260 Fed. Appx. 2009 (C.A.11 Fla. 2007), the defendant argued his right to due process was violated because he was placed on the Florida sex offender website without notice even though he was never charged with or convicted of any sex offense.

82. The Court agreed with Robinson's claim stating:

The Florida Sex Offender Act defines a sex offender as a person who "has been [c]onvicted of committing, attempting, soliciting, or conspiring to commit" any of the enumerated offenses, including rape. Fla. Stat. § 943.0435(1)(a)(1). Pursuant to this statute, Florida has established a public website, in which each sex offender's name, address, photograph, and offense is listed. *See* [http:// offender. fdle. state. fl. us](http://offender.fdle.state.fl.us). We have held that "the stigmatizing effect of being classified as a sex offender constitutes a deprivation of liberty under the Due Process Clause." *Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir.1999). Therefore, "[a]n inmate who has never been convicted of a sex crime is entitled to due process before the state declares him to be a sex offender."

See, Robinson v. Satz, 260 Fed. Appx. 2009 (C.A.11 Fla. 2007).

83. The Defendant contends he has never been convicted of a sex crime, which requires registration under §943.0435, and therefore, he should not be identified as a sex offender and posted on the website.

84. The Defendant also alleges that he received no notice that he was going to be identified as a sex offender before he was placed on the website.

85. Based on the holding in *Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir.1999), the Defendant is entitled to due process before he was declared a sex offender and identified on the state of Florida's sex offender website. *See Kirby*, 195 F.3d at 1292.

86. The Defendant has therefore stated a valid due process claim.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court enter a judgment declaring the permanent placement of the Defendant on the sex offender registry to be declared invalid due to lack of notice and failure to give the Defendant an opportunity to be heard and defend against the allegations that the FDLE relied upon in order to place the Defendant on the registry.

IV. INJUNCTIVE RELIEF.

THE FDLE SHOULD BE ENJOINED FROM ENFORCING THE SEX OFFENDER REGSITRATON REQUIREMENTS AGAINST THE DEFENDANT AS SUCH REQUIREMENTS ARE AN IMPROPER RETROACTIVE SENTENCE ENHANCEMENT.

87. This is an action for injunctive relief based upon a violation of the Defendant's Due Process Rights under the Constitution of the State of Florida, Article I, Section 9.

88. This action for injunctive relief is based upon an incorrect application of law that has resulted in an excessive and illegal sentence enhancement.

89. The Defendant requests that this Court enter an Order, *NUNC PRO TUNC*, in order to correct the erroneous and illegal sentence enhancement that has resulted.

90. The Defendant requests this Court enter an Order enjoining the FDLE from enforcing §943.0435, Florida Statutes (1998) against the Defendant, as the term "conviction" did not apply to the Defendant.

91. In this case, the Defendant's probation ended prior to the enactment of §943.0435(1)(b), Florida Statutes); therefore, a plea of no contest did not constitute a conviction within the meaning of sex offender laws prior to July 1, 1998.

92. A court possesses the inherent power to correct errors, *nunc pro tunc*, even after the term of court has expired, and such corrections relate back and take effect as the date of the judgment.

93. In this case, the predicates for a injunction are: (1) irreparable harm, (2) inadequate remedy at law, (3) clear legal right to the relief requested and (4) a temporary injunction would serve the public interest.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court to enter an Order enjoining the FDLE from enforcing §943.0435, Florida Statutes (1999) against the Defendant, and that the Court grant any further relief this Court deems just and appropriate.

V. **DECLARATORY RELIEF.**

APPLICATION OF SECTION 943.0435, FLORIDA STATUTE (1998) TO THE DEFENDANT VIOLATES THE EIGHTH AMENDMENT.

94. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

95. This is an action for declaratory judgment based upon a violation of Defendant's U.S. and Florida Constitutional Rights respectively, which forbid illegal retroactive sentence enhancements as *ex post facto* violations.

96. The Defendant challenges the constitutionality of §943.0435, Florida Statutes (2009) as applied to him.

97. The Defendant contends that the constitutionality of §943.0435, Florida Statutes requiring a person convicted of a crime prior to the implementation of House Bill 115, violates his constitutional rights and his Eighth Amendment's prohibition against cruel and unusual punishment.

98. In this case, because the Defendant entered a plea to §847.0135(4), Florida Statutes and was exempt from the registration requirements of §943.0435, Florida Statutes (2009), the FLDE's action to make the Defendant register as a sex offender is characterized as punitive.

99. Such registration requirement is "punishment" within the Eighth Amendment, as well as "cruel and unusual" punishment prohibited by the Constitution.

100. As the Supreme Court addressed in *Robinson v. California*, 370 U.S. 660 (1962), individuals can only be punished for culpable acts, and not for their status.

101. Further, the *Robinson* Court articulated the proposition that, under the Eighth Amendment, the criminalization of status constitutes cruel and unusual punishment.

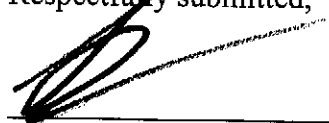
REQUEST FOR RELIEF

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court enter an Order:

1. Granting an evidentiary hearing to determine the merits of this Motion;
2. Vacating and setting aside the Plea and Sentence as to Count I, §847.0135(4), and discharging or resentencing the Defendant; and
3. Awarding such other and further relief this Court deems just and proper.

DATED this 20th day of October, 2010.

Respectfully submitted,



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Paetra T. Brownlee, Esq.
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Telephone: (407) 388-1900
Facsimile: (407) 622-1511
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 20th day of October, 2010 to:

Office of the State Attorney
415 North Orange Avenue
Orlando, Florida 32801



Robert L. Sirianni, Jr., Esq.

OATH

STATE OF ~~FLORIDA~~ ^{Missouri}
COUNTY OF St. Louis

Before me, the undersigned authority, this day personally appeared Patrick J. Clark who first being duly sworn, says that he is the defendant in the above-styled cause, that he or she has read the foregoing Motion and has personal knowledge of the facts and matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

Patrick J. Clark
Defendant

SWORN AND SUBSCRIBED TO before me on this 3 day of February 2010.

Susan McDuffie
NOTARY PUBLIC

Personally known _____ or produced identification

Type of Identification produced Missouri Drivers license



AFFIDAVIT

BEFORE ME, the undersigned authority,
Patrick J Clark PATRICK J CLARK on this ___ day of
January, 2010, personally appeared Patrick J. Clark known to me to be a credible person
and of lawful age, who being by me first duly sworn, on his/her oath, deposes and says:

In 1995 I WAS charged with a crime of Lewd
and Lascivious ACT ON A Child. I retained William
J Shaffer ATTORNEY at LAW. Myself, MR. Shaffer
and my Father made AN agreement to Plea no contest.

It WAS NOT AN admission of guilt. I understood that
I might not win my case with a jury so I took
a deal the prosecutor prescribed. The disposition

WAS AS follows: Two years administrative probation
after being examined by DR. Dawnina Trassler,
Psychiatrist.

~~My~~ My sentence WAS 2 days time served
and ~~the~~ adjudication of guilt withheld.

pc ~~I WAS sentenced with 2 years prob~~



2

On February 29 1996 at the conclusion of the hearing, William Shaffer said to me, while his hand was on my shoulder, "Remember, You can vote, bare arms, hold office, and sign your applications that you were not convicted. You have no travel restrictions."

He took his hand from my shoulder, brushed his thumb across his nose and said, "keep your nose clean and I'll see you in two years ^{and} ~~and~~ have this expunged."

That was the original agreement. Mr. Shaffer

made it clear that if I plead no contest, he would

have this charge expunged. Myself, My Father and

Mr Shaffer agreed on this. I went to work at Disney World in the beginning of April 1996 as part time. Full time in Aug 1996.

On October 13 1998, a Disney lawyer Steve Eisenhard

pulled me in the office of Allen Cramer, entertainment

manager at Epcot. Steve put a computer print out

on the table in front of me. It ^{read} said, Patrick Clark

convicted sex offender, Eisenhard, the
Disney Lawyer said, "Is that you!" I explained,
"that's me but I'm not convicted". ~~to~~ They
next words said by the Disney Lawyers were,
"You're A Fucking Liar", I said to him that
I had a lawyer, Mr Schaffer, Eisenhard said
"Your Lawyer's' A Fucking Liar. I was soon
after fired from Disney, for lying on my application
wich I did NOT do. That was Oct 13 1998.

I was hit by a drunk driver on July 23 1995.
Lawson Lamar, state attorney, did not prosecute
the man who hit me and ran because he found
out I was prosecuted by him and ended up
working at Disney. The drunk driver WAS NOT
prosecuted! Three months after I was
hit by a drunk driver. I was fired from Disney
because I WAS ON A LIST!
My career GONE!

The day Disney lawyer confronted me
at work, I called Shaffer. He made
excuses ~~and~~ not to contact me.

Nothing about my disposition said anything
about having to register as anything.

No list existed at that time. I would
have gone to trial! I was never notified

by ANYONE AT ANYTIME that I had to register
as a sex offender. I ~~was~~ worked

the ~~the~~ largest company in Florida, paid
taxes, and no state of government official

ever said that I had to register.

In the past decade, I have been
relentlessly harassed by officers of
the law to register. They have come
to my house, frightened my ~~me~~ family and
me.

5 From 1999 through the 2000s, I have been struggling to find any one with common sense enough to do the right thing and remove me from this unbelievable hellish list.

Every thing that has been happening to me in the past 12 years has been a horrific nightmare. It is very hard to write. I have been diagnosed with Post traumatic stress disorder by Dr Harry Bradley 314 644-1515.

The most important thing in my life has been ripped from me, my fiancée Linda Coonce, I waited my whole life for her, IN June 1998, St John Police came to her house and threatened to start the proceedings to take her daughter away if I lived there. My Family ... Gone! Civilians are not harassing me. It's law enforcement! I have hired the best Attorney in this state, Scott Rosenbloom. He has committed malpractice. I am required to register here in MO. or else there are going to arrest me. I can't live where I want, go where I want. I am in constant fear for my life. I can't spend one night from where I'm registered or risk being prosecuted. I am now afraid to go out or interact with people for fear of losing friends.

6
I cant believe that any state or government has the right to say where you can live, with who you can live, and what holidays you cant celebrate, I was told that I could not celebrate halloween in 2009 by St Louis county Police. I have been denied housing, education, jobs and the family I created There was nothing written on my disposition from the state of Florida on Feb 29 1996 that said anything about registering as a Sex Offender, or that I could not leave the state if I want.

I could not have seen any of this coming because the List didn't exist when I plead. This List has cost me EVERYTHING I've worked for or dreamed to Love. I am weak and losing concentration.

I don't deserve this, I want what's left of my life back!

Help!
Patrick Clark

7
If the question is how has this event affected my life?
Then I say, how wasn't it! Everything that was normal
isn't anymore. I cannot keep living like this. I have
become so depressed that it's hard to enjoy anything.
I have a hard time understanding how people that have
so much power are so careless with it. My fiancée has
decided to leave me and be with someone else. I wake up
every day praying it's all a dream. It's hard to sleep, eat, and
do most normal things people do. I have to get this over with
soon. I was not convicted in a court of law by a reasonable
Judge or a reasonable prosecuting Attorney on Feb 29 1996
Where is the due process? How do you defend your self from
something that didn't exist at the time of my plea?

I will never have a normal life ~~or~~ ^{OR} a relationship of any
substance being on a list. All the good from this last 10 years
has been completely wiped out by the list!

It is almost impossible to communicate in writing the hell I have
gone through!

I have been forced to register in Missouri. My face is on a website, list. My address, my car license. I am forced to register every 90 in St Louis County. I worked at Walt Disney World from early 96 to late 98. I have many performance awards.

I have helped produce shows ~~in~~ involving the Olympics, special Olympics, Miss America, Academy Award winners, Buzz Aldrin ect. I took care of there safety and shows they were involved in. I dated Jody Roacha, she who was the character Mickey Mouse. I know Disney would not like to be known as having a sex offender dating Mickey Mouse. I have spent over \$30,000 in legal ~~and~~ fees. My father John Clark Sr is 83. He is a witness to the agreement between Mr Shaffer and me. Time is of the essence to get into court A.S.A.P. My father is getting more tired every day. Losing everything in life because of being put on a list was not apart of the original agreement given to me by the court on Feb 29 - 1996. I completed my administrative ^{probation} ~~and~~ AT Walt Disney World. It was the best job I've ever had.

9
On May 23rd I WAS ANNOUNCING AT A remote control ~~car~~ ^{car} RACE
in castleberry FC. AT Superior Hobbie close to the corner of
Highway 17-19 and 436. At the break, BARRY and Edie Shappico,
the stepfather and mother of the girl who accused me, came to me
and confessed. They put there arms around me and said they
were sorry. They also stated that they knew she ~~was~~ ^{had} lied.
They said they knew the truth and should have told the truth
themselves. BARRY also stated that he was charged with the same
crime and that the charges were dropped. BARRY said he ~~was~~
asked the prosecutor to drop the charges on me. Edie and
BARRY were aware that I WAS FIRED FROM Disney for being
on a list. After the race I went to AN ORANGE COUNTY
SHERIFF Sub Station AT 17-92 and 436. They declined to
take my statement. ~~The~~

The following day I called Schaffers' office. Carol
his secretary answered the phone. I told her that BARRY and
Edie confessed. She didn't believe me. I said I want
to talk to MR Schaffer. Carol said not to bother him
because he was going to France. Soon after I WAS
weak from exhaustion and came back to St. Louis.
In 2008 I receive a call from FL. Law Enforcement
telling be there was a WARRANT for me for leaving FL.
without telling any one.

Having trouble writing.

I am disabled! How can I be ~~expected~~^{expected} to write very specificly. Every thing I have been through because of this list these past twelve years becuse of law enforcement, was not part of my scentencing.

It is almost impossible to write down. This is no way to go through life.

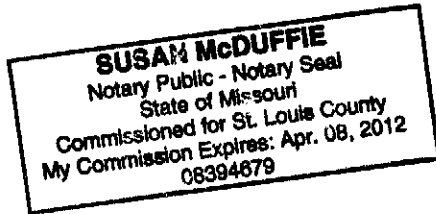
thank you
Patrick J Clark

Further Affiant sayeth not.

Patrick J. Clark
Defendant

State of ~~Florida~~ Missouri
County of St. Louis

The forgoing instrument was acknowledged before me this 3 day of February, 2010,
by Patrick J. Clark, who is personally known to me or produced Missouri Dr. License as
identification and who did/did not take an oath.



Susan McDuffie

Notary Public
My Commission Expires:



Florida Department of
Law Enforcement

James T. "Tim" Moore
Commissioner

Criminal Justice Information Services
Sexual Offender/Predator Unit

Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-8572
888-357-7332
FAX (850) 410-8599
www.fdle.state.fl.us

July 10, 2000

Sir or Madam:

The Florida Department of Law Enforcement (FDLE) has you listed as a registered Sexual Predator or Sexual Offender. Federal law mandates that the FDLE *must* conduct quarterly address verifications for all Sexual Predators and annual verification for all Sexual Offenders. Florida law, section 775.21 or 943.0435, F.S. requires your compliance as part of your registration requirements.

To make this process as simple as possible, FDLE has included a pre-addressed envelope in which to return the attached form. Please fill out the pertinent information on the form, and mail to FDLE no later than July 31, 2000. If you are a registered Sexual Predator, please be aware that you will receive this letter on a quarterly basis, and will be required to comply each time. If you are a Sexual Offender, you will receive this letter annually.

If you live in a state other than Florida, but you work or attend school in Florida, give the address where you work or attend school as the *temporary address*. If you routinely reside at an address other than your permanent address for 4 or more days in a month, or 14 or more days during any calendar year, you **MUST** give that address in the "temporary address" space provided.

If you have any questions concerning this letter, please contact the Sexual Offender/Predator Unit (SOPU) toll free at 1-888-357-7332 between the hours of 8:00 a.m. and 7:00 p.m. Monday – Friday.

Sincerely,

James T. Moore
Commissioner

Lucy Ingley, SMAS
Sexual Offender/Predator Unit
JTM/LI/sp

Enclosures

CHAPTER 98-81

Committee Substitute for Senate Bill No. 1992

An act relating to criminal justice; amending s. 415.5018, F.S.; requiring that the Department of Law Enforcement provide the Department of Children and Family Services with access to certain criminal justice information for purposes of child protective investigations and emergency child placement; amending s. 775.13, F.S., relating to the registration of convicted felons; providing a definition; providing an exemption from registration requirements for certain registered sexual offenders; amending s. 775.21, F.S.; revising the Florida Sexual Predators Act; defining terms; prescribing criteria and procedures for designation as a sexual predator; requiring that fingerprints be made if a sexual predator is not imprisoned; prescribing registration and notification requirements; providing registration requirements with respect to a sexual predator who is supervised by the Department of Corrections or by a federal agency or who is in the custody of a local jail; providing notification requirements for a sexual predator who intends to reside in another state or jurisdiction; providing for removal of designation as a sexual predator; providing penalties for failing to comply with duties imposed on persons so designated; requiring the Department of Law Enforcement and the Department of Corrections to verify the addresses of sexual predators; prohibiting misuse and misrepresentation of public records information and providing penalties; creating s. 775.24, F.S.; specifying that it is the duty of the court to uphold laws governing sexual predators and sexual offenders; providing certain requirements for the court if a person meets the criteria for designation as a sexual predator or for classification as a sexual offender; creating s. 775.25, F.S.; specifying jurisdictions in which a sexual predator or sexual offender may be prosecuted for an act or for failure to act; amending s. 943.043, F.S.; authorizing the Department of Law Enforcement to provide information on sexual offenders and sexual predators through the Internet; providing civil immunity for certain persons and entities who provide information regarding sexual offenders and sexual predators; amending s. 943.0435, F.S.; revising definitions; specifying sexual offenders who must report and identify themselves; revising reporting requirements; providing civil immunity for specified persons and entities that administer such reporting requirements; providing for certain persons to be relieved from such reporting requirements; requiring that the Department of Law Enforcement verify the addresses of certain sexual offenders; providing requirements for a sexual offender who intends to reside in another state or jurisdiction; requiring that a sexual offender maintain registration for life, except under specified circumstances; amending s. 943.325, F.S.; providing for drawing blood specimens from certain convicted persons committed to a county jail for purposes of DNA analysis; providing for obtaining blood specimens from a person who is not incarcerated following conviction; providing for a statewide protocol for securing such specimens; providing that



certain medical facilities and personnel and persons who assist a law enforcement officer in withdrawing blood specimens are not civilly or criminally liable for such actions; providing for an application to the court for an order authorizing that a person be taken into custody for the purpose of providing blood specimens; providing that failure to comply with certain requirements is not grounds for challenging the validity of a blood specimen or excluding evidence based on a blood specimen; amending ss. 944.605, 947.177, F.S.; prescribing penalties for inmates who refuse to submit to the taking of a digitized photograph; amending ss. 944.606, 944.607, F.S.; revising provisions governing notification concerning the release of sexual offenders; specifying persons with respect to whom such provisions apply; requiring that fingerprints be made if the sexual offender is not imprisoned; providing registration requirements with respect to a sexual offender who is in the custody of a local jail or who is supervised by the Department of Corrections or by a federal agency; providing civil immunity for specified persons and entities who release information concerning such offenders; amending s. 948.01, F.S.; providing that after a specified date, an offender who commits certain specified sexual offenses is ineligible for administrative probation; amending s. 948.03, F.S.; providing that conditions of probation and community control for specified offenders do not require oral pronouncement and shall be standard conditions of supervision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4), (5), and (6) of section 415.5018, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, and a new subsection (4) is added to that section, to read:

415.5018 District authority and responsibilities.—

(4) Notwithstanding any other law, the Department of Law Enforcement shall provide the department with electronic access to criminal justice information that is lawfully available and not exempt from s. 119.07(1), only for the purposes of child protective investigations and emergency child placement. As a condition of access to such information, the department shall execute an appropriate user agreement with the Department of Law Enforcement which addresses access, use, dissemination, and destruction of such information and which complies with all applicable laws and rules of the Department of Law Enforcement.

Section 2. Section 775.13, Florida Statutes, is amended to read:

775.13 Registration of convicted felons, exemptions; penalties.—

(1) As used in this section, the term "convicted" means, with respect to a person's felony offense, 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.

(2)~~(1)~~ Any person who has been convicted of a felony in any court of this state shall, within 48 hours after entering any county in this state, register with the sheriff of said county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

(3)~~(2)~~ Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within 48 hours after entering any county in this state register with the sheriff of said county in the same manner as provided for in subsection (2)~~(1)~~.

(4)~~(3)~~ Any person who is within any county of the state as of October 1, 1997, shall register with the sheriff of such county by December 1, 1997, if such person would be required to register under the terms of subsection (2)~~(1)~~ or subsection (3)~~(2)~~, if he or she were entering such county.

(5)~~(4)~~ In lieu of registering with the sheriff as required by this section, such registration may be made with the Department of Law Enforcement, and is subject to the same terms and conditions as required for registration with the sheriff.

(6)~~(5)~~ This section does not apply to an offender:

(a) Who has had his or her civil rights restored;

(b) Who has received a full pardon for the offense for which convicted;

(c) Who has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than 5 years prior to such time for registration, unless the offender is a fugitive from justice on a felony charge or has been convicted of any offense since release from such incarceration or other sentence or supervision;

(d) Who is a parolee or probationer under the supervision of the United States Parole Commission if the commission knows of and consents to the presence of the offender in Florida or is a probationer under the supervision of any federal probation officer in the state or who has been lawfully discharged from such parole or probation; or

(e) Who is a sexual predator and has registered as required under s. 775.21; or

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607.

(7)~~(6)~~ Failure of any such convicted felon to comply with this section constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8)~~(7)~~ All laws and parts of laws in conflict herewith are hereby repealed, provided that nothing in this section shall be construed to affect any law of

this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

Section 3. Section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act; definitions; legislative findings, purpose, and intent; criteria; designation; registration; community and public notification; immunity; penalties.—

(1) SHORT TITLE.—This section may be cited as “The Florida Sexual Predators Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Chief of police” means the chief law enforcement officer of a municipality.

(b) “Community” means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.

(c) “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.

~~(d)~~(e) “Department” means the Department of Law Enforcement.

~~(e)~~(d) “Entering the county” includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).

(f) “Permanent residence” means a place where the person abides, lodges, or resides for 14 or more consecutive days.

~~(g)~~(e) “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 a stay of 2 or more weeks.

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(a) Repeat sexual ~~sex~~ offenders, sexual ~~sex~~ offenders who use physical violence, and sexual ~~sex~~ offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual ~~Sex~~ offenders are extremely likely to use physical violence and to repeat their offenses, and

most sexual ~~sex~~ offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual ~~sex~~ offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.03(5). The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. 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.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, and before October 1, 1995:

1. An offender who was found by the court under former s. 775.22 or former s. 775.23 to be a sexual predator is a "sexual predator" if the court made a written finding that the offender was a sexual predator at the time of sentencing, as required by former s. 775.23. Such sexual predator must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to community and public notification as provided in subsection (7). 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 ~~temporarily or permanently resides~~ shall notify members of 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.

2. If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and:

a. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator, or

b. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information which indicated that the offender met the sexual predator criteria based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's sexual predator list, and shall notify the state attorney who prosecuted the offense that triggered the administrative sexual predator designation for offenders described in sub-subparagraph a., or the state attorney of the county where the offender establishes or maintains a permanent or temporary residence ~~permanently or temporarily resides~~ on October 1, 1996, for offenders described in sub-subparagraph b. The state attorney may bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the court then makes a written finding that the offender is a sexual predator, the offender is designated as a sexual predator, ~~and~~ must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to community and public notification requirements as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender is not designated as a sexual predator with respect to that offense, is not required to register or be registered as a sexual predator with the department, and is not subject to the requirements for community and public notification as a sexual predator.

(b) For a current offense committed on or after October 1, 1995, and before October 1, 1996:

1. An offender who was found by the court under former s. 775.22 or former s. 775.23 to be a sexual predator is a "sexual predator" if the court made a written finding that the offender was a sexual predator at the time of sentencing, as required by former s. 775.23. Such sexual predator must register or be registered with the department as provided in subsection (6), and is subject to community and public notification as provided in subsection (7). 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 temporarily or permanently resides 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.

2. If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and:

a. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator, or

b. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information which indicated that the offender met the sexual predator criteria based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's sexual predator list, and shall notify the state attorney who prosecuted the offense that triggered the administrative sexual predator designation for offenders described in sub-subparagraph a., or the state attorney of the county where the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides on October 1, 1996, for offenders described in sub-subparagraph b. The state attorney may bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the court makes a written finding that the offender is a sexual predator, the offender is designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7) ~~provisions under former s. 775.225~~. If the court does not make a written finding that the offender is a sexual predator, the offender is not designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(c) For a current offense committed on or after October 1, 1996, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony meets the criteria of former ss. 775.22(2) and 775.23(2), specifically, the felony is:

a. A capital, life, or first-degree first-degree felony violation of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent, or of chapter 794 or s. 847.0145, or a violation of a similar law of another jurisdiction; ~~or~~

b. An 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; or

~~c.b.~~ Any second-degree second-degree or greater felony violation of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; chapter 794; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; 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 s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145, or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an 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 under this subsection 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.

~~(e) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.~~

(5) SEXUAL PREDATOR DESIGNATION.—For a current offense committed on or after October 1, 1996, an offender is designated as a sexual predator as follows:

(a)1. An offender who meets the sexual predator criteria described in paragraph (4)(c) who is before the court for sentencing for a current offense committed on or after October 1, 1996, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the

offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

2. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent or temporary residence ~~permanently or temporarily resides~~ in this state meets the sexual predator criteria described in paragraph (4)(c) because the offender committed a similar violation in another jurisdiction on or after October 1, 1996, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence ~~permanently or temporarily resides~~ 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.

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 described in this section. 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 the department. 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.

(b) 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 the department within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c)(b) If the Department of Corrections, the department, 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 as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence ~~temporarily or permanently resides~~ upon first entering the state for offenders described in subparagraph (a)2. 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, ~~and the department and other law enforcement agencies are not authorized to inform the community and the public of the offender's presence. The offender must comply with the convicted felon registration requirements under s. 775.13.~~ The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction in which the order was issued which states that such designation has been removed, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator must register with the department by providing the following information to the department:

1. Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and, address of any current temporary residence, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department 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 a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the 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, of the vessel, live-aboard vessel, or houseboat.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel, treatment, and abuse registry records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections' office that is responsible for supervising the sexual predator.

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

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

(e)(b) If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility, and establishes or maintains a residence permanently or temporarily resides in the state, the sexual predator shall initially register in person at an office of the department, or at the sheriff's office in the county in which the predator establishes or maintains a residence permanently or temporarily resides, within 48 hours after establishing permanent or temporary residence in this state. If a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f)(e) Within 48 hours after ~~Subsequent to~~ the initial registration required under paragraph (a) or paragraph (e)(b), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of initial registration within 48 hours after any change in the predator's permanent or temporary residence. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to

comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles 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 a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles 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, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

~~(g)~~(d) Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change of the predator's residence, the predator shall report in person to a driver's license office, ~~regardless of whether the predator's residence has changed~~, and shall be subject to the requirements specified in paragraph ~~(f)~~(e). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

~~(h)~~(e) 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 ~~permanently or temporarily resides~~ within 48 hours after the sexual predator registers with the department.

(i) A sexual predator who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or the department 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 promptly provide to the department the information received from the sexual predator. The department shall 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 predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator 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 predator indicated he or she would leave this state, notify the sheriff or the department, whichever agency is the agency to which the sexual 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 predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator 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 the department in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(k)(4)~~1. The department is responsible for the on-line maintenance of current information regarding each registered sexual predator. The department 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. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free "900" telephone number for this purpose. When the department provides information regarding a registered sexual 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 that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

~~(l)(g)~~ A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual 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 any felony sex offense that met the criteria for the sexual predator designation. However, a sexual predator who was designated as a sexual predator by a court before October 1, 1998, and who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 10 years and has 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 the sexual predator

resides for the purpose of removing the sexual predator designation. A sexual predator who was designated a sexual predator by a court on or after October 1, 1998, who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and who has 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 the sexual predator resides for the purpose of removing the sexual predator designation. The court may ~~has the discretion to~~ grant or deny such relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with federal standards applicable to the removal of the designation as a sexual predator, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual predator may again petition the court for relief, subject to the standards for relief provided in this paragraph. Unless specified in the order, a sexual predator who is granted relief under this paragraph must comply with the requirements for registration as a sexual offender and other requirements provided under s. 943.0435 or s. 944.607. If a petitioner obtains an order from the court that imposed the order designating the petitioner as a sexual predator which removes such designation, the petitioner 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.

(7) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. 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 temporarily or permanently resides shall notify members of 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. Information provided to members of the community and the public regarding a sexual predator must include:

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

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators. ~~The department, in consultation and cooperation with the Department of Highway Safety and Motor Vehicles, shall determine the feasibility of requiring sexual predators to have a special designation on any drivers license, identification card, or license tag issued in this state.~~

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with federal requirements that apply to the laws of this state governing sexual predators. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections. The department shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections.

(9)(8) 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, or 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 under this section.

(10)(9) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register or who fails, after registration, to maintain, acquire, or renew a driver's license or identification card or provide required location information, or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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 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 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.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, 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.

Section 4. Section 775.24, Florida Statutes, is created to read:

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(1) The Legislature finds that, for the purpose of approving a plea agreement or for other reasons, certain courts enter orders that effectively limit or nullify requirements imposed upon sexual predators and sexual offenders pursuant to the laws of this state and prevent persons or entities from carrying out the duties imposed, or exercising the authority conferred, by such laws. The laws relating to sexual predators and sexual offenders are substantive law. Furthermore, the Congress of the United States has expressly encouraged every state to enact such laws, and has provided that, to the extent that a state's laws do not meet certain federal requirements, the state will lose significant federal funding provided to the state for law enforcement and public safety programs. Unless a court that enters such an order determines that a person or entity is not operating in accordance with the laws governing sexual predators or sexual offenders, or that such laws or any part of such laws are unconstitutional or unconstitutionally applied, the court unlawfully encroaches on the Legislature's exclusive power to make laws and places at risk significant public interests of the state.

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

(3) If the court enters an order that affects an agency's performance of a duty imposed under the laws governing sexual predators or sexual offenders, or that limits the agency's exercise of authority conferred under such laws, the Legislature strongly encourages the affected agency to file a motion in the court that entered such order. The affected agency may, within 60 days after the receipt of any such order, move to modify or set aside the order or, if such order is in the nature of an injunction, move to dissolve the injunction. Grounds for granting any such motion include, but need not be limited to:

(a) The affected agency was not properly noticed.

(b) The court is not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is illegally applied or unless the statute or the challenged part of it is unconstitutional on adjudicated grounds.

(c) Jurisdiction may not be conferred by consent of the parties.

(d) To the extent that the order is based upon actions the agency might take, the court's order is premature and, if and when such actions are taken, these actions may be challenged in appropriate proceedings to determine their enforceability.

(e) The injunction affects the public interest and would cause injury to the public.

(f) The order creates an unenforceable, perpetual injunction.

(g) The order seeks to restrict the agency in the performance of its duties outside the court's territorial jurisdiction.

Section 5. Section 775.25, Florida Statutes, is created to read:

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.

Section 6. Section 943.043, Florida Statutes, is amended to read:

943.043 Toll-free telephone number; sexual predator and sexual offender ~~sex offender~~ information.—

(1) The department 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.

(2)(4) The department shall provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual sex offenders and may provide other information reported to the department which is not confidential or exempt from public disclosure and which is reported to the department by the Department of Corrections as provided in s. 944.607 or by a sex offender as provided in s. 943.0435.

(3)(2) The department shall provide to any person, upon request and at a reasonable cost determined by the department, a copy of the photograph of any sexual sex 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.

(4)(3) The department, and its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good-faith good faith compliance with this section and will shall be presumed to have acted in good faith by reporting information. The presumption of good faith is not overcome if technical or clerical errors are made by the department, and its personnel, or any individual or entity acting at the request or upon the direction of the department in reporting the information, if the department and its personnel are unable to report information because the information has not been provided or reported by a person or agency required to provide or report the information to the department, or if the department, and its personnel, or any individual or entity acting at the request or upon the direction of the department reports report information that was falsely reported without the knowledge of the department, and its personnel, or such individual or entity.

Section 7. Section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual Sex offenders required to register with ~~report to~~ the department; penalty.—

(1) As used in this section, the term:

(a) "Sexual Sex offender" means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar analogous offenses in another jurisdiction: 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; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of

subparagraph 1., a sanction imposed 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.

(b) “Convicted” means that, regarding the person’s offense, there has been a determination of guilt the person has been determined guilty as a result of a plea or 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.

(c) “Permanent residence” and “temporary residence” have the same meaning ascribed in s. 775.21.

(2) A sexual sex offender shall initially report in person at an office of the department, or at the sheriff’s office in the county in which the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides, within 48 hours after establishing permanent or temporary residence in this state. A sex offender permanently resides in this state if the offender abides, lodges, or resides in a place for more than 2 consecutive weeks. A sex offender temporarily resides in this state if the offender abides, lodges, or resides in a place for 2 consecutive weeks or less, excluding a stay of 2 consecutive weeks or less at a different residence due to a vacation or an emergency or special circumstance that requires the sex offender to leave his or her place of permanent or temporary residence for 2 weeks or less. The sexual sex offender shall provide his or her name, date of birth, social security number, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, occupation and place of employment, address of permanent or legal residence, or address of any current temporary residence, including a rural route address and a post office box, date and place of each conviction, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. If the sexual offender’s place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department 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’s place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the 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, of the vessel, live-aboard vessel, or houseboat. If a sexual sex offender reports at the sheriff’s office, the sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the sexual sex offender.

(3) Within 48 hours after the Subsequent to the initial report required under subsection (2), a sexual sex offender shall report in person at a driver’s

license office of the Department of Highway Safety and Motor Vehicles ~~within 48 hours after any change in the offender's permanent or temporary residence.~~ At the driver's license office the sexual ~~sex~~ offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual ~~sex~~ offender shall identify himself or herself as a sexual ~~sex~~ offender who is required to comply with this section and shall provide proof that the sexual offender initially reported as required in subsection (2). The sexual ~~sex~~ offender shall provide any of the information specified in subsection (2), if requested. The sexual ~~sex~~ offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual ~~sex~~ offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual ~~sex~~ offender, including a set of fingerprints.

(4) Each time a sexual ~~sex~~ offender's driver's license or identification card is subject to renewal, and within 48 hours after any change in the offender's permanent or temporary residence, the offender shall report in person to a driver's license office, ~~regardless of whether the offender's residence has changed,~~ and shall be subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual ~~sex~~ offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in ss. 943.043, 943.0435, and 944.606.

(5) This section does not apply to a sexual ~~sex~~ offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

(6) The department shall verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of the Department of Corrections in a manner that is consistent with federal requirements.

(7) A sexual offender who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or the department 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 promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual 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 indicated he or she would leave this state, notify the sheriff or department, whichever agency is the agency to which the sexual offender 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 that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual 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 the department in the manner required by this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9)(6) A sexual ~~sex~~ offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(10)(7) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, and the personnel of those departments, and any individual or entity acting at the request or upon the direction of any of those departments are immune from civil liability for damages for ~~good-faith~~ good-faith compliance with the requirements of this section, and shall be presumed to have acted in good faith in compiling, recording, and reporting information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, or the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a ~~sexual sex~~ offender fails to report or falsely reports his or her current place of permanent or temporary residence.

(11) A sexual offender must maintain registration with the department for the duration of his or her life, unless the sexual offender 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 any felony sex offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, 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 felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender. The court may grant or deny such relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with federal standards applicable to the removal of registration requirements for a sexual offender, and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may

otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

Section 8. Section 943.325, Florida Statutes, is amended to read:

943.325 Blood specimen testing for DNA analysis.—

(1)(a) Any person convicted, or who was previously convicted and is still incarcerated, in this state for any offense or attempted offense defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s. 812.133, or s. 812.135, and who is within the confines of the legal state boundaries, shall be required to submit two specimens of blood to a Department of Law Enforcement designated testing facility as directed by the department.

(b) For the purpose of this section, the term "any person" shall include both juveniles and adults committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice or committed to a county jail.

(2) The withdrawal of blood for purposes of this section shall be performed in a medically approved manner and only under the supervision of a physician, registered nurse, licensed practical nurse, or duly licensed medical personnel.

(3) Upon a conviction of any person for any offense under paragraph (1)(a) which results in the commitment of the offender to a county jail, correctional facility, or juvenile facility, the entity responsible for the facility shall assure that the blood specimens required by this section are promptly secured and transmitted to the Department of Law Enforcement. If the person is not incarcerated following such conviction, the person may not be released from the custody of the court or released pursuant to a bond or surety until the blood specimens required by this section have been taken. The chief judge of each circuit shall, in conjunction with the sheriff or other entity that maintains the county jail, assure implementation of a method to promptly collect required blood specimens and forward the specimens to the Department of Law Enforcement. The Department of Law Enforcement, in conjunction with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, shall develop a statewide protocol for securing the blood specimens of any person required to provide specimens under this section. Personnel at the jail, correctional facility, or juvenile facility shall implement the protocol as part of the regular processing of offenders.

(4) If any blood specimens submitted to the Department of Law Enforcement under this section are found to be unacceptable for analysis and use or cannot be used by the department in the manner required by this section,

the Department of Law Enforcement may require that another set of blood specimens be taken as set forth in subsection (11).

~~(5)~~⁽³⁾ The Department of Law Enforcement shall provide the specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens. The specimens shall thereafter be forwarded to the designated testing facility for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

~~(6)~~⁽⁴⁾ The analysis, when completed, shall be entered into the automated database maintained by the Department of Law Enforcement for such purpose, and shall not be included in the state central criminal justice information repository.

~~(7)~~⁽⁵⁾ The results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(8)~~⁽⁶⁾ The Department of Law Enforcement and the statewide criminal laboratory analysis system shall establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules. The system shall be available to all criminal justice agencies.

~~(9)~~⁽⁷⁾ The Department of Law Enforcement shall:

(a) Receive, process, and store blood samples and the data derived therefrom pursuant to subsection (1) or pursuant to a requirement of supervision imposed by the court or the Parole Commission with respect to a person convicted of any offense specified in subsection (1).

(b) Collect, process, maintain, and disseminate information and records pursuant to this section.

(c) Strive to maintain or disseminate only accurate and complete records.

(d) Adopt rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit blood samples pursuant to this section.

~~(10)~~⁽⁸⁾(a) The court shall include in the judgment of conviction for an offense specified in this section, or a finding that a person described in subsection (1) violated a condition of probation, community control, or any other court-ordered supervision, an order stating that blood specimens are required to be drawn by the appropriate agency in a manner consistent with this section and, unless the convicted person lacks the ability to pay, the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement. The reimbursement payment may be deducted from any existing balance in the inmates's bank account. If the account balance is insufficient

to cover the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement, 50 percent of each deposit to the account must be withheld until the total amount owed has been paid. If the judgment places the convicted person on probation, community control, or any other court-ordered supervision, the court shall order the convicted person to submit to the drawing of the blood specimens as a condition of the probation, community control, or other court-ordered supervision. For the purposes of a person who is on probation, community control, or any other court-ordered supervision, the collection requirement must be based upon a court order. If the judgment sentences the convicted person to time served, the court shall order the convicted person to submit to the drawing of the blood specimens as a condition of such sentence.

(b) The appropriate agency shall cause the specimens to be drawn as soon as practical after conviction but, in the case of any person ordered to serve a term of incarceration as part of the sentence, the specimen shall be drawn as soon as practical after the receipt of the convicted person by the custodial facility. For the purpose of this section, the appropriate agency shall be the Department of Corrections whenever the convicted person is committed to the legal and physical custody of the department. Conviction information contained in the offender information system of the Department of Corrections shall be sufficient to determine applicability under this section. The appropriate agency shall be the sheriff or officer in charge of the county correctional facility whenever the convicted person is placed on probation, community control, or any other court-ordered supervision or form of supervised release or is committed to the legal and physical custody of a county correctional facility.

(c) Any person previously convicted of an offense specified in this section, or a crime which, if committed in this state, would be an offense specified in this section, and who is also subject to the registration requirement imposed by s. 775.13, shall be subject to the collection requirement of this section when the appropriate agency described in this section verifies the identification information of the person. The collection requirement of this section does not apply to a person as described in s. 775.13(6) ~~s. 775.13(5)~~.

(d) For the purposes of this section, conviction shall include a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication or, in the case of a juvenile, the finding of delinquency.

(e) If necessary, the state or local law enforcement or correctional agency having authority over the person subject to the sampling under this section shall assist in the procedure. The law enforcement or correctional officer so assisting may use reasonable force if necessary to require such person to submit to the withdrawal of blood. The withdrawal shall be performed in a reasonable manner. A hospital, clinical laboratory, medical clinic, or similar medical institution; a physician, certified paramedic, registered nurse, licensed practical nurse, or other personnel authorized by a hospital to draw blood; a licensed clinical laboratory director, supervisor, technologist, or technician; or any other person who assists a law enforcement officer is not civilly or criminally liable as a result of withdrawing blood specimens according to accepted medical standards when requested to do so by a law

enforcement officer or any personnel of a jail, correctional facility, or juvenile detention facility, regardless of whether the convicted person resisted the drawing of blood specimens.

(11) If the Department of Law Enforcement determines that a convicted person who is required to submit blood specimens under this section has not provided the specimens, the department, a state attorney, or any law enforcement agency may apply to the circuit court for an order that authorizes taking the convicted person into custody for the purpose of securing the required specimens. The court shall issue the order upon a showing of probable cause. Following issuance of the order, the convicted person shall be transported to a location acceptable to the agency that has custody of the person, the blood specimens shall be withdrawn in a reasonable manner, and the person shall be released if there is no other reason to justify retaining the person in custody. The agency that takes the convicted person into custody may, but is not required to, transport the person back to the location where the person was taken into custody.

(12) Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the blood specimens required under this section.

(13) If a court, a law enforcement agency, or the Department of Law Enforcement fails to strictly comply with this section or to abide by a state-wide protocol for collecting blood specimens, such failure is not grounds for challenging the validity of the collection or the use of a specimen, and evidence based upon or derived from the collected blood specimens may not be excluded by a court.

Section 9. Subsection (4) is added to section 944.605, Florida Statutes, to read:

944.605 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(4) An inmate who refuses to submit to the taking of a digitized photograph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(a) "Conviction" means a determination of guilt which ~~that~~ is the result of ~~a plea or a trial or the entry of a plea of guilty or nolo contendere,~~ regardless of whether adjudication is withheld. A conviction for a violation of a similar law of another jurisdiction 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.

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01 or s. 782.02, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; a felony violation of chapter 794; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, or a violation of a similar law of another jurisdiction, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

(2) The Legislature finds that sexual offenders, especially those who have committed their offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount governmental interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing sexual offender information to law enforcement agencies and to persons who request such information, and releasing such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety.

(3)(a) The department must provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department must provide: the sexual offender's name and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; and the offender's intended residence address, if known. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in paragraph (a) and any information specified in subparagraph 2. that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

(b) The department must provide the information described in subparagraph (a)1. to:

1. The sheriff of the county from where the sexual offender was sentenced;
2. The sheriff of the county and, if applicable, the police chief of the municipality, where the sexual offender plans to reside;
3. The Florida Department of Law Enforcement; and
4. Any person who requests such information,

either within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if an offender is released earlier than anticipated. All such information provided to the Department of Law Enforcement must be available electronically as soon as the information is in the agency's database and must be in a format that is compatible with the requirements of the Florida Crime Information Center.

(c) Upon request, the department must provide the information described in subparagraph (a)2. to:

1. The sheriff of the county from where the sexual offender was sentenced; and
2. The sheriff of the county and, if applicable, the police chief of the municipality, where the sexual offender plans to reside,

either within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if an offender is released earlier than anticipated.

(d) Upon receiving information regarding a sexual offender from the department, the Department of Law Enforcement, the sheriff or the chief of police shall provide the information described in subparagraph (a)1. to any individual who requests such information and may release the information to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) This section authorizes the department or any law enforcement agency to notify the community and the public of a sexual offender's presence in the community. However, with respect to a sexual offender who has been found to be a "sexual predator" under chapter 775, the Florida Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the sexual predator's presence in the community, as provided in chapter 775. ~~Release of information pursuant to this section does not constitute unauthorized public disclosure of information that relates to sexual predators under chapter 775.~~

(5) An elected or appointed official, public employee, school administrator or employee, or 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 under this section.

Section 11. Section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual ~~sex~~ offenders.—

(1) As used in this section, the term:

(a) "Sexual ~~Sex~~ offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar analogous offenses in another jurisdiction: 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; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph.

(b) "Conviction" means a determination of guilt which is the ~~as a~~ result of a ~~plea or 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.

(2) The clerk of the court of that court which convicted and sentenced the sexual offender for the offense or offenses described in subsection (1) shall forward to the department and the Department of Law Enforcement a certified copy of any order entered by the court imposing any special condition or restriction on the sexual offender 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.

(3) 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."

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated must register with the Department of Corrections and provide the following information: name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; and permanent or legal residence and address of temporary residence, including any rural route address or post office box. The Department of Corrections shall verify the address of each sexual offender in the manner described in s. 775.21 and s. 943.0435.

(5)(2) In addition to notification and transmittal requirements imposed by any other provision of law, the department shall compile information on

any sexual ~~sex~~ offender and provide the information to the Department of Law Enforcement. The information shall be made available electronically to the Department of Law Enforcement as soon as this information is in the department's database and must be in a format that is compatible with the requirements of the Florida Crime Information Center.

~~(6)~~⁽³⁾ The information provided to the Department of Law Enforcement must include:

(a) The information obtained from the sexual offender under subsection ~~(4) name of the sex offender and any alias, if known;~~

(b) The sexual ~~sex~~ offender's most current address and place of permanent and ~~or~~ temporary residence, including the name of the county or municipality in which the offender permanently or temporarily resides and, if known, the intended place of permanent or temporary residence upon satisfaction of all sanctions;

(c) The legal status of the sexual ~~sex~~ offender and the scheduled termination date of that legal status;

(d) The location of, and local telephone number for, any Department of Corrections' office that ~~of probation, community control, parole, conditional release, or control release~~ which is responsible for supervising the sexual ~~sex~~ offender;

(e) An indication of whether the victim of the offense that resulted in the offender's status as a sexual ~~sex~~ offender was a minor;

~~(f) A physical description of the sex offender;~~

~~(f)~~^(g) The offense or offenses at conviction which resulted in the determination of the offender's status as a sex offender; and

~~(g)~~^(h) A digitized photograph of the sexual ~~sex~~ offender which must have been taken within 60 days before the offender is released from the custody of the department or a private correctional facility by expiration of sentence under s. 944.275 or must have been taken by January 1, 1998, or within 60 days after the onset of the department's supervision of any sexual ~~sex~~ offender who is on probation, community control, conditional release, parole, provisional release, or control release or who is supervised by the department under the Interstate Compact Agreement for Probationers and Parolees. If the sexual ~~sex~~ offender is in the custody of a private correctional facility, the facility shall take a digitized photograph of the sexual ~~sex~~ offender within the time period provided in this paragraph and shall provide the photograph to the department.

If any information provided by the department changes during the time the sexual ~~sex~~ offender is under the department's control, custody, or supervision, the department shall, in a timely manner, update the information and provide it to the Department of Law Enforcement in the manner prescribed in subsection (2).

(7) If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender and forward the information to the Department of Law Enforcement. The custodian of the local jail shall also take a digitized photograph of the sexual offender while the offender remains in custody and shall provide the digitized photograph to the Department of Law Enforcement.

(8) If the sexual offender is under federal supervision, the federal agency responsible for supervising the sexual offender may forward to the Department of Law Enforcement any information regarding the sexual offender which is consistent with the information provided by the department under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the Department of Law Enforcement for purposes of public notification.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(10).

(10) The failure of a sexual offender to submit to the taking of a digitized photograph, or to otherwise comply with the requirements of this section, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11)(4) The department, the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, the Department of Corrections, and its 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 ~~good faith~~ compliance with this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or ~~and~~ providing information. The presumption of good faith is not overcome if technical or clerical errors are made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, and its 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 compiled, recorded, or provided by the department and its personnel is incomplete or incorrect because the information has not been provided to the department by a person or agency required to provide the information, or because the if the department and its personnel compile, record, or provide information that was not reported or was falsely reported without the knowledge of the department and its personnel.

Section 12. Subsection (4) is added to section 947.177, Florida Statutes, to read:

947.177 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(4) An inmate who refuses to submit to the taking of a digitized photograph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. Subsection (15) is added to section 948.01, Florida Statutes, to read:

948.01 When court may place defendant on probation or into community control.—

(15) 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.

Section 14. Subsection (5) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation or community control.—

(5) Conditions imposed pursuant to this subsection, as specified in paragraphs (a) and (b), 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.

(a) Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation 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:

1. A mandatory curfew from 10 p.m. to 6 a.m. The court may designate another 8-hour curfew 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.

2. 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.

3. 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.

4. 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.

5. If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on unsupervised contact with a child under the age of 18, unless authorized by the sentencing court 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(b) 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 of this subsection, the court must impose the following conditions of probation or community control:

1. 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.

2. Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

3. A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

4. 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.

5. 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.

Section 15. This section and section 5 of this act shall take effect upon becoming a law; sections 1, 2, 4, 7, 9, 13, and 14 of this act shall take effect July 1, 1998; and sections 3, 6, 8, 10, 11, and 12 of this act shall take effect October 1, 1998.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.

The Florida Department of Law Enforcement

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Name: Patrick James Clark

Person Type: Offender

Legal Status: Released

DOB: 09/29/1965

SSN: [REDACTED]

Person #: 3305

DC#: 145439

SID#: FL04205424

License: [REDACTED]

Primary Information

Race:	<input type="text" value="White"/>	Sex:	<input type="text" value="Male"/>
Height:	<input type="text" value="509"/>	Weight:	<input type="text" value="165"/>
Hair Color:	<input type="text" value="Brown"/>	Eye Color:	<input type="text" value="Blue"/>
Skin Tone:	<input type="text"/>	DNA Taken:	<input type="checkbox"/>
FBI Number:	<input type="text"/>	FDLE Number:	<input type="text" value="FL04205424"/>
DC Number:	<input type="text" value="145439"/>	DJJ Number:	<input type="text"/>
Record Status:	<input type="text" value="Active"/>		
High Risk:	<input type="checkbox"/>	High Risk Act. Date:	<input type="text"/>
Driver License Marked:	<input type="text" value="Unknown/No DL"/>	<input type="checkbox"/> Flyer Wanted?	
Physical File?:	<input checked="" type="checkbox"/>		
Display Status:	<input type="text" value="Everywhere"/>	Display Reason:	<input type="text"/>

Legal Status Information

*Legal Status: Lock Legal Status

Effective Date: Termination Date:

Show History Date of Death:

Registration Requirement Information

*Reg. Requirement: Lock Reg. Requirement

*Reg. Reason:

Show History

Added By:

Modified By:

Date Added:

Date Modified:

Subject Types

Subject Type	Category	Effective Date	Termination Date	PCN	Date
<input checked="" type="checkbox"/> Offender	Qualifier			T005197994	07/21/2006

License Information

http://offender.flcjn.net/SexPred_Maintenance/personSearch.do

9/16/2010

License Number	License Type	Display Status	Date
[REDACTED]	Operator License	Everywhere	03/05/2010

[Add License](#)

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EXHIBIT B

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 95-CF-0010355

v.

PATRICK CLARK,

Defendant.

DEFENDANT'S AMENDED VERIFIED MOTION FOR POST-CONVICTION RELIEF

COMES NOW the Defendant, PATRICK CLARK, by and through the undersigned counsel and pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure and Chapter 86, Florida Statutes, and hereby moves this Court to vacate, set aside or correct the sentence delivered in this matter and, in support thereof, states the following:

PRELIMINARY STATEMENT

1. In this Motion, the Defendant, PATRICK CLARK will be referred to as, "Clark" or "Defendant".
2. The Plaintiff, the State of Florida, will be referred to as, the "State."
3. The trial judge presiding over the plea and sentencing hearing in this matter will be referred to as, the "Trial Court."
4. The assistant public defender appointed to represent the Defendant will be referred to as, "Defense Counsel."
5. Defendant's Sworn Affidavit is attached hereto as Exhibit "A" and incorporated herein.
6. The transcript of the Plea & Sentencing Hearing for this case no longer exists.

7. A copy of the Florida Department of Law Enforcement (“FDLE”) Sexual Offender Notification Letter to the Defendant is attached hereto as Exhibit “B”.

8. A copy of Chapter 98-81 is attached hereto as Exhibit “C” (the “Bill”). The Bill also provides that a person who has entered a plea of no contest and has received a withhold of adjudication is convicted within the meaning of § 943.0345 Florida Statute, relating to registration of a sexual offender.

9. A copy of the FDLE Sex Offender Registry website regarding the Defendant is attached hereto as Exhibit “D”.

10. This is an action pursuant to Section 86.021 of the Florida Statutes.

11. This court has jurisdiction over this matter pursuant to Section 26.021 of the Florida Statutes.

12. The Defendant has not filed any previous motion for post-conviction relief in this cause.

13. There are no appeals pending in this cause, which would make adjudication of the claims set forth herein moot or not ripe for review.

STATEMENT OF THE CASE AND FACTS

14. On or about August 31, 1995, the State of Florida, by way of an Information, charged the Defendant with the following:

a. Count I: Lewd and Lacivious Act, pursuant to Fla. Stat. § 800.04(1).

15. On or about February 29, 1996, the Defendant entered a *plea of no contest* to Count I.

16. The Court entered a withhold of adjudication.

17. On or about March 29, 1996, the Trial Court amended the Defendant’s sentence to two (2) years of administrative probation.

A. **FDLE Sexual Offender Notification Letter to the Defendant dated July 10, 2000 ("FDLE Letter")**.

18. According to the FDLE Letter:
- a. The Defendant must now register as a sexual offender and abide by the registration requirements of Florida Statutes 943.0435.
 - b. As such, the Defendant is now listed on the FDLE Sex Offender Registry website and must comply with all sex offender registration requirements.

(See, FDLE Letter, Ex. D).

B. **Defendant's Allegations Set Forth in Affidavit**.

19. The Defendant's Affidavit states the following:
- a. That the Agreement the Defendant maintained with the Prosecution is that he would not be registered as a sex offender, as the sex offender registry did not exist as of the date the charges were filed against the Defendant;
 - b. The Defendant accepted the Plea because the State Attorney and Defense Attorney informed him that he would not be a sex offender, as the laws regarding sex offender were not enacted in 1996;
 - c. That the Defendant could get the charge expunged;
 - d. During July 2000, the Defendant received a letter stating he was to be placed on the FDLE Sex Offender Registry;
 - e. The Defendant was released from administrative probation on February 29, 1998, exactly 2 years after his plea of no contest;
 - f. The Defendant successfully completed all probation sanctions on or before February 29, 1998; and
 - g. The FDLE and State of Florida never informed the Defendant that he was required to register as a sex offender on or after October 1, 1997 or on or after July 1, 1998.

(See, Affidavit, Ex. A, pp. 1-3).

C. Section 943.0435 of the 1998 Florida Statutes.

20. In 1998, the FDLE specifically exempted persons entering a plea of no contest from the registration requirements of Fla. Stat. §943.0435 (1998).

21. Fla. Stat. § 943.0435 (1998) states:

(1) As used in this section, the term:

(a) “Sex offender” means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: s.787.025, chapter 794, s.796.03, s.800.04, s.827.071, s.847.0133, s.847.0135, s.847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) “Convicted” means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.

Fla. Stat. § 943.0435 (1998) (emphasis added).

22. Section 943.0435 of the 1998 Florida Statutes excludes persons that enter a plea of no contest from the registration requirements imposed by the FDLE.

D. Section 943.0435 of the 2009 Florida Statutes.

23. In 1999, the exemption for persons entering a plea of no contest was removed from Fla. Stat. § 943.0435, and such persons became obligated to conform to the registration requirements of Fla. Stat. § 943.0435.

24. § 943.0435, Florida Statutes (1999) states:

(1) As used in this section, the term:

(a) "Sexual offender" means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: 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; s.827.071; s.847.0133; s.847.0135; s.847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) "Convicted" means that, regarding the person's offense, there has been a determination of guilt as a 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.

Fla. Stat. § 943.0435 (2009) (emphasis added).

25. The 1999 section includes an amendment to correct an error in the sexual offender criteria listed in § 943.0435 of the Florida Statutes.

26. Prior to 1999, a person who entered a plea of no contest and received a withhold of adjudication was exempted from designation as a sexual offender.

27. The new law took effect on July 1, 1998.

28. The Defendants probation, however, terminated on February 29, 1998.

E. Chapter 98-81.

29. As set forth in Section 17 of the Bill, the law became effective on July 1, 1998.

30. Section 7 of the Bill changed the Definition of the word, "conviction" to include pleas of no contest and withholds of adjudication. (*See*, Bill p.19).

31. Prior to the enactment of the Bill, the sexual offender statutes specifically excluded persons entering a plea of no contest from the registration requirements of Section 943.0435 because such persons were not considered "convicted."

F. Plea Hearing Colloquy.

32. During the Plea Hearing, both the State and Defense agreed the Defendant would not be placed on the sex offender registry, as this designation was not contemplated at the time of the Defendant's Plea.

33. This agreement induced the Defendant to enter a plea. (*See*, Sentencing Hearing).

34. For the reasons that follow, this Court should vacate, set aside or correct the final judgment and sentence delivered in this matter.

ARGUMENT

I. DECLARATORY JUDGMENT.

WHEN THE DEFENDANT ENTERED HIS PLEA TO SECTION 800.04(1) FLORIDA STATUTES (1995), HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435, FLORIDA STATUTES (1998).

A. Introduction.

35. This is an action for declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

36. Specifically, because the Court withheld adjudication as to the Defendant's offenses after he entered a plea of no contest, the Defendant was never "convicted" of these offenses. Thus, the Defendant is not a sexual offender subject to the registration requirements of Fla. Stat. § 943.0435 (1998).

37. Therefore, there is serious doubt as to whether the provision of Fla. Stat. § 943.0435 (1998) apply to the Defendant.

38. During 2000, however, the FLDE permanently placed the Defendant on the Sex Offender Registry.

39. The Defendant is now permanently registered as a sex offender.

40. The Defendant contends that § 943.0435 exempted the Defendant from the registration requirements, as the Defendant was not "convicted" within the meaning of Section 943.0435 of the 1998 Florida Statutes.

41. The Defendant further contends that the required convictions necessary in order to impose the registration requirements on the Defendant cannot be supported by the record.

B. Analysis.

42. Section 943.0435 of the Florida Statutes, entitled “Sex offenders required to report to the department; penalty,” was enacted in 1997 and provided in pertinent part:

(1) As used in this section, the term:

(a) “Sex offender” means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: s.787.025, chapter 794, s.796.03, s.800.04, s.827.071, s.847.0133, s.847.0135, s.847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed 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.

(b) “Convicted” means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.

Fla. Stat. § 943.0435 (1997) (emphasis added).

43. On July 1, 1998, *after the Defendant’s probation expired*, section 943.0435(1)(b) was amended to read:

(b) “Convicted” means that, regarding the person’s offense, there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Thereafter, in 2008, when Price was charged with failure of a sex offender to properly register, section 943.0435(1)(b) provided:

(b) “Convicted” means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section....

Fla. Stat. § 943.0435 (1998) (emphasis added).

44. In 1997, under the language of Section 943.0435, the term “convicted” for purposes of sex offender registry **did not** include entry of a plea of *nolo contendere*, regardless of whether adjudication was withheld.¹

45. Conversely, in 1998, the language of Section 943.0435 defined “convicted” for purposes of sex offender registry to include entry of a plea of *nolo contendere*, regardless of whether adjudication was withheld.

46. Based upon the record in the instant case, the Defendant does not satisfy the criteria to register as a sex offender under the 1998 version of the Florida Statutes.

47. The Defendant relies on the fact that the language of the 1997 version of section 943.0435 does not include a plea of *nolo contendere*, with adjudication withheld, under the definition of the term, “convicted.” Rather, the language of the 1997 Florida Statute provides: “‘Convicted’ means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.” Fla. Stat. § 943.0435 (1997).

48. The 1998 version of Fla. Stat. § 943.0435 should not control this case because the sex offender registry requirements commenced after the Defendant’s probation ended in 1998. *See, e.g., Cella v. State*, 831 So.2d 716 (Fla. 5th DCA 2002); *St. Lawrence v. State*, 785 So.2d 728, 730 (Fla. 5th DCA 2001).

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court to determine that § 800.04(1) of the 1995 Florida Statutes does not require the Defendant to register as a sex offender under Fla. Stat. § 943.0435 (1998), as the Defendant was not convicted within the meaning of Section 943.0435 of the 1998 Florida Statutes.

¹ Under Section 921.0021 of the 1997 Florida Statutes, the term, “conviction,” did not include a person entering a plea of no contest and receiving a withhold of adjudication until October 1, 1998; *See also*, Chapter 97-194: “The Florida Criminal Punishment Code, consisting of sections 921.002-921.0026, Florida Statutes, is established effective October 1, 1998, and applies to any felony committed on or after that date.”

II. **EX POST FACTO.**

APPLICATION OF SECTION 943.0435 OF THE 1998 FLORIDA STATUTES TO THE DEFENDANT VIOLATES THE EX POST FACTO CLAUSE.

49. This is an action for declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

50. This is an action for declaratory judgment based upon a violation of Plaintiff's U.S. and Florida Constitutional Rights respectively, which forbid illegal retroactive sentence enhancements as *ex post facto* violations.

51. Both the Florida and United States constitutions mandate that it is unconstitutional for lawmakers to enact laws that increase the punishment for a criminal offense after the crime has been committed. *See*, U.S. Const., Art. I, § 9, cl. 3; U.S. Const. Art. I § 10, cl. 1; *see also*, Fla. Const. Art. I, § 10.

52. While the ban on *ex post facto* legislation applies only to criminal laws and proceedings, a civil remedy can be so punitive in either purpose or effect as to be deemed criminal and, therefore, subject to *ex post facto* principles.

53. This is the problem that arises in the present case.

54. At the Plea Hearing, the Defendant stated he bargained for anonymity in exchange for his plea.

55. The Defendant alleges the Prosecutor promised he would not be a sex offender or be placed on a sex offender registry if he entered the plea to § 800.04(1) of the 1995 Florida Statutes.

56. The FLDE has taken it upon its own accord to apply the sex offender registration requirements to the Defendant for the purpose of penalty enhancement without ever providing proper and timely notice to the Defendant.

57. A permanent placement of the Defendant on the sex offender registry is a penalty.

58. As stated above, a statutory change operates retrospectively and is a constitutional *ex post facto* violation when it applies to convicted offenders whose crimes were committed prior to the statute's effective date.

59. Here, the FDLE is subjecting the Defendant to a sentence and punishment which stem from a statute that was enacted well-after the commission of the Defendant's offense.

60. This retroactive application of a statute is an illegal sentence enhancement and punishment in the Defendant's case because it alters the definition of criminal conduct and increases the length of the Defendant's sentence.

61. The application of the statute in this manner subjects the Defendant to the mandatory criminal penalty of sex offender registration even though the Defendant's conviction did not require such a registration.

62. This retroactive application of the statutory provisions violates *ex post facto* prohibitions.

63. *Wiita v. State* provides an illustration. There, the plaintiff filed a motion to vacate his sentence and/or preclude his compliance with Section 943.0435 of the 1997 Florida Statutes. *Wiita v. State*, 744 So. 2d 1232, 1233 (Fla. 4th DCA 1999).

64. Wiita claimed that because section 943.0435 was not in effect at the time he entered his plea agreement, the reporting and publication requirements of the statute were neither contemplated nor made a part of his plea agreement. *Id.* Based upon these facts, Wiita argued there was good cause to vacate his plea because it was not entered knowingly or voluntarily. *Id.*

65. The trial court found Wiita did not understand the full consequences of his plea agreement. *Id.* at 1234-35. Accordingly, the trial court granted Wiita's motion, stating Wiita

was no longer subject to the provisions of section 943.0435 and found Wiita's plea was not freely and voluntarily entered.² *Id.*

66. Similarly, at the time of the Defendant's offense, Florida law, as set forth in Fla. Stat. § 943.0435(1)(b) (1998), did not require a mandatory sex offender registration for entering a plea of no contest to a violation of Fla. Stat. § 800.04(1).

67. Therefore, the Defendant challenges the FDLE's imposition and application of the sex offender laws in this manner, as it is a violation of the *Ex Post Facto* Clause.

68. At the time the Defendant committed the alleged offense, Fla. Stat. § 943.0435, (1998) did not include a plea no contest to Fla. Stat. § 800.04 as an offense which mandated sex offender registration.

69. According to Chapter 98-91 of the Florida Statutes, the effective date of the amendment to Section 943.0435 was July 1, 1998. The Defendant was removed from supervision or sanctions well-after July 1, 1998.

70. Therefore, the amended language of the Florida Statutes, mandating sex offender registration for a violation of Fla. Stat. § 800.04(1), was not in effect at the time the Defendant committed the offense. Therefore, the July 1, 1998 amendment cannot be applied to the Defendant's case.

71. Accordingly, any imposition of the Florida Statutes in a manner that classifies the Defendant's offense as one which mandates sex offender registration is a violation of the *Ex Post Facto* Clause.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests that this Court enter a judgment declaring the Defendant's permanent placement on the sex offender registry is invalid.

² Since Wiita did not preserve the issue at the Trial Court, the Appellate Court did not address such issue on appeal. *Id.* at 1234.

III. DECLARATORY JUDGMENT.

THE DEFENDANT'S DUE PROCESS RIGHTS ARE BEING VIOLATED BECAUSE HE IS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435 OF THE 1998 FLORIDA STATUTES.

72. This is an action for declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

73. This is an action for declaratory judgment based upon a violation of the Defendant's Due Process Rights under the Constitution of the State of Florida, Article I, Section 9.

74. During 2000, the FLDE permanently placed the Defendant on the Sex Offender Registry.

75. The failure of the FDLE to give proper notice or undertake to contact the Defendant of the FLDE's intention to place the Defendant on the sex offender registry deprived the Defendant of:

- i. a fair hearing on these disputed issues;
- ii. a meaningful opportunity to be heard; and
- iii. an opportunity to raise a meaningful defense.

76. Article I, Section 9 of the Florida Constitution provides, "[...] no person shall be deprived of life, liberty or property without the due process of law." Fla. Const. art. 1 § 9.

77. The FLDE's failure to provide proper notification to the Defendant deprived the Defendant of the opportunity to challenge, contradict or rebut the evidence that the FLDE relied upon in order to permanently place the Defendant on the sex offender registry.

78. Here, the Defendant was convicted of a crime that did not require him to register as a sex offender.

79. In *Robinson v. Satz*, 260 Fed. Appx. 2009 (11th Cir. 2007), the defendant argued his due process rights were violated because he was placed on the Florida sex offender website without notice; the defendant was never charged with or convicted of any sex offense.

80. The Court agreed with Robinson's claim stating:

The Florida Sex Offender Act defines a sex offender as a person who "has been [c]onvicted of committing, attempting, soliciting, or conspiring to commit" any of the enumerated offenses, including rape. Fla. Stat. § 943.0435(1)(a)(1). Pursuant to this statute, Florida has established a public website, in which each sex offender's name, address, photograph, and offense is listed. *See* [http:// offender. fdle. state. fl. us](http://offender.fdle.state.fl.us). We have held that "the stigmatizing effect of being classified as a sex offender constitutes a deprivation of liberty under the Due Process Clause." *Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir.1999). Therefore, "[a]n inmate who has never been convicted of a sex crime is entitled to due process before the state declares him to be a sex offender."

See, Robinson v. Satz, 260 Fed. Appx. 2009 (11th Cir. 2007).

81. The Defendant contends he has never been convicted of a sex crime, which requires registration under § 943.0435, and therefore, he should not be identified as a sex offender and posted on the website.

82. The Defendant also alleges that he received no notice that he was going to be identified as a sex offender before he was placed on the website.

83. Based on the holding in *Kirby v. Siegelman*, the Defendant is entitled to due process before he was declared a sex offender and identified on the state of Florida's sex offender website. *See, Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir.1999)

84. The Defendant has therefore stated a valid due process claim.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court enter a judgment declaring the permanent placement of the Defendant on the sex offender registry to be declared invalid due to lack of notice and failure to give the Defendant an opportunity to be heard and defend against the allegations that the FDLE relied upon in order to place the Defendant on the registry.

IV. INJUNCTIVE RELIEF.

THE FDLE SHOULD BE ENJOINED FROM ENFORCING THE SEX OFFENDER REGSITRATON REQUIREMENTS AGAINST THE DEFENDANT AS SUCH REQUIREMENTS ARE AN IMPROPER RETROACTIVE SENTENCE ENHANCEMENT.

85. This is an action for injunctive relief based upon a violation of the Defendant's Due Process Rights under the Constitution of the State of Florida, Article I, Section 9.

86. This action for injunctive relief is based upon an incorrect application of law that has resulted in an excessive and illegal sentence enhancement.

87. The Defendant requests that this Court enter an Order, *NUNC PRO TUNC*, in order to correct the erroneous and illegal sentence enhancement that has resulted.

88. The Defendant requests this Court enter an Order enjoining the FDLE from enforcing §943.0435, Florida Statutes (1998) against the Defendant, as the term "conviction" did not apply to the Defendant.

89. In this case, the Defendant's probation ended prior to the enactment of §943.0435(1)(b), Florida Statutes); therefore, a plea of no contest did not constitute a conviction within the meaning of sex offender laws prior to July 1, 1998.

90. A court possesses the inherent power to correct errors, *nunc pro tunc*, even after the term of court has expired, and such corrections relate back and take effect as the date of the judgment.

91. In this case, the predicates for a injunction are: (1) irreparable harm, (2) inadequate remedy at law, (3) clear legal right to the relief requested and (4) a temporary injunction would serve the public interest.

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court to enter an Order enjoining the FDLE from enforcing §943.0435, Florida Statutes (1999) against the Defendant, and that the Court grant any further relief this Court deems just and appropriate.

V. **DECLARATORY RELIEF.**

APPLICATION OF SECTION 943.0435, FLORIDA STATUTE (1998) TO THE DEFENDANT VIOLATES THE EIGHTH AMENDMENT.

92. This is an action for declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

93. This is an action for declaratory judgment based upon a violation of Defendant's U.S. and Florida Constitutional Rights, respectively, which forbid illegal retroactive sentence enhancements as *ex post facto* violations.

94. Specifically, the Defendant challenges the constitutionality of Fla. Stat. § 943.0435 (2009) as applied to him.

95. The Defendant contends that applying the mandatory provisions of Fla. Stat. § 943.0435, which require a person convicted of a crime prior to the implementation of House Bill 115, is a violation of his constitutional rights and the Eighth Amendment's prohibition against cruel and unusual punishment.

96. Because the Defendant entered a plea to Fla. Stat. § 800.04(1) in 1995, he was exempt from the registration requirements of Fla. Stat. § 943.0435 (2009). Therefore, the FLDE's decision to make the Defendant register as a sex offender is punitive in nature.

97. Such registration requirement falls within the definition of "punishment" under the Eighth Amendment, and constitutes "cruel and unusual" punishment, which prohibited by the Constitution.

98. As the Supreme Court explained in *Robinson v. California*, individuals can only be punished for culpable acts, not for their status. *See, Robinson v. California*, 370 U.S. 660 (1962).

99. Further, under the Eighth Amendment, the criminalization of a person's status constitutes cruel and unusual punishment. *See, id.*

REQUEST FOR RELIEF

WHEREFORE, the Defendant, PATRICK CLARK, respectfully requests this Court enter an Order:

1. Granting an evidentiary hearing to determine the merits of this Motion;
2. Vacating and setting aside the Plea and Sentence as to Count I, § 800.04(1), and discharging or resentencing the Defendant; and
3. Awarding such other and further relief this Court deems just and proper.

DATED this 3rd day of November, 2010.

Respectfully submitted,



Robert L. Sirianni, Jr., Esq.
Florida Bar No. 684716
Paetra T. Brownlee, Esq.
Florida Bar No. 71576
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400 North New York Avenue, Suite 215
Winter Park, Florida 32789
Telephone: (407) 388-1900
Facsimile: (407) 622-1511
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 3rd day of November, 2010 to:

Office of the State Attorney
415 North Orange Avenue
Orlando, Florida 32801



Paetra T. Brownlee, Esq.

OATH

STATE OF MISSOURI
COUNTY OF ST. LOUIS

Before me, the undersigned authority, this day personally appeared PATRICK J. CLARK who first being duly sworn, says that he is the defendant in the above-styled cause, that he has read the foregoing and has personal knowledge of the facts and matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

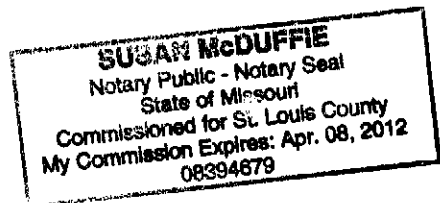
Patrick J. Clark
PATRICK J. CLARK

SWORN AND SUBSCRIBED TO before me on this 28 day of October, 2010.

Susan McDuffie
NOTARY PUBLIC

Personally known _____ or produced identification ✓

Type of Identification produced MO DL



AFFIDAVIT

~~Patrick J. Clark~~
Susan McDuffie

BEFORE ME, the undersigned authority, ~~Patrick J. Clark~~, on this 25 day of October, 2010, personally appeared PATRICK J. CLARK, who being by me first duly sworn, on his oath, deposes and says:

IN 1995, I WAS CHARGED WITH A CRIME OF LEWD AND LACIVIOUS ACT ON A CHILD. I RETAINED WILLIAM J. SCHAFER ATTORNEY AT LAW. MYSELF, MR. SCHAFER, AND MY FATHER, JOHN D. CLARK SR., MADE AN AGREEMENT TO PLEA NO CONTEST IN ORDER TO RECEIVE A SENTENCE OF ADJUDICATION WITHHELD AND EXPUNJMENT IN TWO YEARS FOLLOWING MY ADMINISTRATIVE PROBATION. I UNDERSTOOD THAT I MIGHT NOT WIN WITH A JURY SO I TOOK A DEAL THE PROSECUTOR AND MY LAWYER PRESCRIBED. THE DISPOSITION WAS AS FOLLOWS: TWO YEARS ADMINISTRATIVE PROBATION: AFTER BEING EXAMINED BY DR. DANIEL TRESSLER, PSYCHIATRIST. MY SENTENCE WAS 2 DAYS TIME SERVED AND ADJUDICATION OF GUILT WITHHELD. THERE WAS NO AGREEMENT OR ARRANGEMENT TO BE PLACED ON SEX OFFENDER REGISTRY.



On February 29 1996, at the conclusion of the hearing, William
Schafer said to me, "you have the right to vote, bear ARMS,
hold office, and sign your applications that you were not convicted
of any crime. He also stated that I had no travel restrictions
He had his hand on my shoulder the whole time. When he was done
with his statement he took his hand from my shoulder, brushed
his thumb across his nose and said "keep your nose clean,
and I'll see you in two years and have this expunged."
That was the original agreement. Mr Schafer made it
clear that if I plead no contest he would have this case
expunged. Myself, my Father and Mr Schafer agreed on this.
I went to work at Walt Disney World in the beginning of April
1996 as part time employee. I became full time in August 1996.
July 25 (Lawson Hamner)
In 1998 I was hit by a drunk driver. The state Attorney
knew I was working at W. D. W. ~~in October 1998~~^{pc}

On October 13, 1998, a Disney lawyer, Steve Eisenhard, pulled me into an office of Allen Cramer at Epcot AICO production building. Steve Eisenhard put a printout on the desk in front of me. It read: "PATRICK CLARK 1314 EASTW AVE. convicted sex offenders. Steve said loudly, "Is that you!" I said that my name but I'm not convicted. Then Mr Eisenhard said, "Your a FUCKING LIAR!" I told him I had a lawyer, William Schuffer. Then Mr. Eisenhard said, "Your Lawyer's a FUCKING LIAR!" I was soon after ~~-fired~~ ^{ripped} from Disney for being on a list and lying on my application, which I did not do.

I was hit by a drunk driver on July 25 1998, on Kirkman Road, in front of Universal Studios. The car I was in was totalled and police were called. The person who hit us fled the scene and the police took me to his house to identify him. The state attorney did not prosecute the person within 90 days.

I was a Disney employee and on a list. Lawson
Lamar did not prosecute the drunk driver because
I was on a list working at Disney, formally prosecuted
by him. Three months after I was hit by a drunk driver
I was fired from Disney because I was on a list!
My career gone! The day Disney confronted me
about the list, I called William Schaffer. He had
avoided me. Nothing about my disposition said anything
about me being on a list or having to register. No list
existed at that time. I would have gone to trial. That's
what I wanted to tell Schaffer, but he would not
communicate with me at that time. While in Florida
I was never notified by any state official that
I had to register. I was not notified by my
Lawyer of the State Attorney Lawson Lamar.

In the past decade I have been relentlessly harassed
offences of the law to register. They have come to my
house and frightened me and my family.

From 1999 to 2009 I have been struggling to find
anyone with common sense enough to do the right thing,
and remove me from this unconstitutional hellish list.

These past twelve years have been a nightmare.

It is very hard to put in words. I have been diagnosed
with post traumatic stress by Dr HARRY BRADLEY (3149441515)

The most important thing in my life has been ripped from
me: My fiancée ... Linda Coonce. I waited my whole

life for her. In June 1998, St John police came
to her house and threatened to start proceeding to

take her daughter away if I was living there...

I was an instant ... my family ... gone!

Civilians are not harassing me. Law enforcement is.

I have hired the best attorney in Missouri, Scott

Rosenbloom. He has committed fraud. I retained

him to petition the court to remove me from the

Registry. He has done no such thing. I am required

to register in Missouri or face a felony.

I can't go where I ^{want} ~~want~~, or stay or live where

I want. I am in constant fear for my life!

I am now afraid to go out or interact with

people for fear of losing new friends.

My disposition said nothing about where I

can or can't live or where I can ~~or~~ can't

go. Also what holidays I can celebrate. In 2009

I was told by St. Louis County Police that I could

not participate in Halloween.

I have been denied housing, education, jobs
and my God given Family. There was nothing
in my disposition that expressly implied from
the state of Florida on Feb. 29, 1996, that I
had to register as a sex offender or that I could
not leave the state if I want. I could not
have foreseen any of this because the list did not
exist when I plead. This list has cost me
everything I have worked for or dreamed
to have! I am tired and losing concentration!
I don't deserve this... I want what's left
of my life and freedom back!

If the question is: How has this event effected my life?

Then I say: How hasn't it! Everything that was normal
isn't anymore. I cannot keep living like this.

I have become so depressed that it hard to roll out
of bed or enjoy anything. I cant understand why

people with so much power are so careless with it.

My fiancee ^{has} ~~has~~ decided to ~~to~~ leave me. I

wake up everyday praying it's all a bad dream

Its hard to sleep, eat and do most things

that normal people do. I was not convicted

in a court of law by a reasonable judge or a

reasonable prosecuting attorney on Feb 29 1996.

Where is the due process? How do you defend yourself

from something that didn't exist at the time of my plea?

All of the good from these past 10 years has been wiped out by the his!

I have been forced to register in Missouri. My face and address ~~and~~ is on a ~~the~~ web site. I am forced to register every 90 days in St Louis County.

I worked at W.D.W. from early 96 to late 98. I have many performance awards. I have assisted in producing events that include the U.S. Olympics, Special Olympics, Miss America. Academy Award winners, Astronaut Buzz Aldrin, the list goes on and on, I took care of the safety of these people and the ^{events} shows they were involved in. I dated Jody Rocha, who was the ^{character} ~~copied~~

Mickey Mouse. I have spent over \$30,000 in legal ^{fees} ~~cost~~ to protect my rights and prove my innocence. My Father John D Clark Sr. is 84. He is a witness to the agreement between Mr Schaffer and myself.

Losing everything in life because of being put on
a list was not part of the original agreement
given to me by the court on Feb 29 1996. I completed
my administrative probation while working at
Walt Disney World. I was the best job a person
could ever ask for.

In May of 1999, I was announcing at a remote
control car race in Castleberry FL. At Superior
Hobbies, close to the corner of 17-92 and 436.

At the break Barry and Eddie Schapiro, the
step father and mother of the girl who accused me,
came to me and confessed. They put there arm
around me and said they were sorry they did not
tell the truth. They also stated that they knew
there daughter lied.

They stated that they know the truth and should have told it themselves. Barry also stated that his step daughter charged him with the same crime and that the charges were dropped. Barry stated that he told the prosecutor to drop the charges on me. Barry and Edie were aware that I was fired from Disney for being on the list. After the event where Barry and Edie confessed to me, I went to the Sheriff office at 436 and 17-92, and tried to file a report. They declined to let me make a statement. The following day I called William Schaffer, Carol his secretary answered the ^{phone} ~~phone~~. I told her that Barry and Edie confessed. She didn't believe me, I said I want to talk to schaffer. She said not to bother him, he was going to France for vacation. Soon after I was weak from exhaustion unable to work and moved back to ST. LOUIS. In 2000 I recieved a phone call from Det. Saliciedo telling me there was a warrant for my arrest for leaving Florida with out telling FDLE.

I am looking forward to clearing my name and my day in court

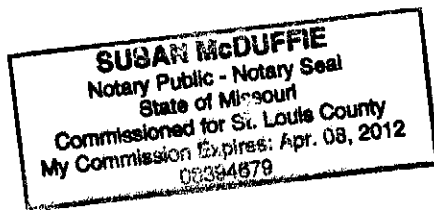
IN OR ABOUT LATE MAY OR MID JUNE OF 1999 I WENT TO
SEE JUDGE BLACKWELL WHITE AT HER OFFICE AT THE NEW
COURT HOUSE. THE ASSISTANT SAID I COULD NOT SEE HER,
THE JUDGE, WITH OUT MY ATTORNEY. I EXPLAINED
THAT MY ATTORNEY WAS AVOIDING ME AND THAT THE
SHAPIROS CONFESSED. THE JUDGE'S ASSISTANT SAID
TO WRITE A LETTER. I DID WRITE A LETTER TO
THE JUDGE IN HER OFFICE. I LEFT MY ADDRESS
AND PHONE NUMBER. I HEARD NO RESPONSE.
SOON AFTER THAT TIME PERIOD I MOVED BACK
TO ST LOUIS MO.

Further Affiant sayeth not.

Patrick J. Clark
PATRICK J. CLARK

State of Missouri
County of St. Louis

The forgoing instrument was acknowledged before me this 28 day of October, 2010,
by PATRICK J. CLARK, who is personally known to me or produced
Missouri DL as identification and who did/did not take an oath.



Susan McDuffie
Notary Public
My Commission Expires: April 8, 2012

FDLE

Florida Department of
Law Enforcement

James T. "Tim" Moore
Commissioner

Criminal Justice Information Services
Sexual Offender/Predator Unit

Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-8572
888-357-7332
FAX (850) 410-8599
www.fdle.state.fl.us

July 10, 2000

Sir or Madam:

The Florida Department of Law Enforcement (FDLE) has you listed as a registered Sexual Predator or Sexual Offender. Federal law mandates that the FDLE *must* conduct quarterly address verifications for all Sexual Predators and annual verification for all Sexual Offenders. Florida law, section 775.21 or 943.0435, F.S. requires your compliance as part of your registration requirements.

To make this process as simple as possible, FDLE has included a pre-addressed envelope in which to return the attached form. Please fill out the pertinent information on the form, and mail to FDLE no later than July 31, 2000. If you are a registered Sexual Predator, please be aware that you will receive this letter on a quarterly basis, and will be required to comply each time. If you are a Sexual Offender, you will receive this letter annually.

If you live in a state other than Florida, but you work or attend school in Florida, give the address where you work or attend school as the *temporary address*. If you routinely reside at an address other than your permanent address for 4 or more days in a month, or 14 or more days during any calendar year, you **MUST** give that address in the "temporary address" space provided.

If you have any questions concerning this letter, please contact the Sexual Offender/Predator Unit (SOPU) toll free at 1-888-357-7332 between the hours of 8:00 a.m. and 7:00 p.m. Monday - Friday.

Sincerely,

James T. Moore
Commissioner



Lucy Ingley, SMAS
Sexual Offender/Predator Unit
JTM/LI/sp

Enclosures

CHAPTER 98-81

Committee Substitute for Senate Bill No. 1992

An act relating to criminal justice; amending s. 415.5018, F.S.; requiring that the Department of Law Enforcement provide the Department of Children and Family Services with access to certain criminal justice information for purposes of child protective investigations and emergency child placement; amending s. 775.13, F.S., relating to the registration of convicted felons; providing a definition; providing an exemption from registration requirements for certain registered sexual offenders; amending s. 775.21, F.S.; revising the Florida Sexual Predators Act; defining terms; prescribing criteria and procedures for designation as a sexual predator; requiring that fingerprints be made if a sexual predator is not imprisoned; prescribing registration and notification requirements; providing registration requirements with respect to a sexual predator who is supervised by the Department of Corrections or by a federal agency or who is in the custody of a local jail; providing notification requirements for a sexual predator who intends to reside in another state or jurisdiction; providing for removal of designation as a sexual predator; providing penalties for failing to comply with duties imposed on persons so designated; requiring the Department of Law Enforcement and the Department of Corrections to verify the addresses of sexual predators; prohibiting misuse and misrepresentation of public records information and providing penalties; creating s. 775.24, F.S.; specifying that it is the duty of the court to uphold laws governing sexual predators and sexual offenders; providing certain requirements for the court if a person meets the criteria for designation as a sexual predator or for classification as a sexual offender; creating s. 775.25, F.S.; specifying jurisdictions in which a sexual predator or sexual offender may be prosecuted for an act or for failure to act; amending s. 943.043, F.S.; authorizing the Department of Law Enforcement to provide information on sexual offenders and sexual predators through the Internet; providing civil immunity for certain persons and entities who provide information regarding sexual offenders and sexual predators; amending s. 943.0435, F.S.; revising definitions; specifying sexual offenders who must report and identify themselves; revising reporting requirements; providing civil immunity for specified persons and entities that administer such reporting requirements; providing for certain persons to be relieved from such reporting requirements; requiring that the Department of Law Enforcement verify the addresses of certain sexual offenders; providing requirements for a sexual offender who intends to reside in another state or jurisdiction; requiring that a sexual offender maintain registration for life, except under specified circumstances; amending s. 943.325, F.S.; providing for drawing blood specimens from certain convicted persons committed to a county jail for purposes of DNA analysis; providing for obtaining blood specimens from a person who is not incarcerated following conviction; providing for a statewide protocol for securing such specimens; providing that



certain medical facilities and personnel and persons who assist a law enforcement officer in withdrawing blood specimens are not civilly or criminally liable for such actions; providing for an application to the court for an order authorizing that a person be taken into custody for the purpose of providing blood specimens; providing that failure to comply with certain requirements is not grounds for challenging the validity of a blood specimen or excluding evidence based on a blood specimen; amending ss. 944.605, 947.177, F.S.; prescribing penalties for inmates who refuse to submit to the taking of a digitized photograph; amending ss. 944.606, 944.607, F.S.; revising provisions governing notification concerning the release of sexual offenders; specifying persons with respect to whom such provisions apply; requiring that fingerprints be made if the sexual offender is not imprisoned; providing registration requirements with respect to a sexual offender who is in the custody of a local jail or who is supervised by the Department of Corrections or by a federal agency; providing civil immunity for specified persons and entities who release information concerning such offenders; amending s. 948.01, F.S.; providing that after a specified date, an offender who commits certain specified sexual offenses is ineligible for administrative probation; amending s. 948.03, F.S.; providing that conditions of probation and community control for specified offenders do not require oral pronouncement and shall be standard conditions of supervision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4), (5), and (6) of section 415.5018, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, and a new subsection (4) is added to that section, to read:

415.5018 District authority and responsibilities.—

(4) Notwithstanding any other law, the Department of Law Enforcement shall provide the department with electronic access to criminal justice information that is lawfully available and not exempt from s. 119.07(1), only for the purposes of child protective investigations and emergency child placement. As a condition of access to such information, the department shall execute an appropriate user agreement with the Department of Law Enforcement which addresses access, use, dissemination, and destruction of such information and which complies with all applicable laws and rules of the Department of Law Enforcement.

Section 2. Section 775.13, Florida Statutes, is amended to read:

775.13 Registration of convicted felons, exemptions; penalties.—

(1) As used in this section, the term "convicted" means, with respect to a person's felony offense, 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.

~~(2)(1)~~ Any person who has been convicted of a felony in any court of this state shall, within 48 hours after entering any county in this state, register with the sheriff of said county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

~~(3)(2)~~ Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within 48 hours after entering any county in this state register with the sheriff of said county in the same manner as provided for in subsection ~~(2)(1)~~.

~~(4)(3)~~ Any person who is within any county of the state as of October 1, 1997, shall register with the sheriff of such county by December 1, 1997, if such person would be required to register under the terms of subsection ~~(2)(1)~~ or subsection ~~(3)(2)~~, if he or she were entering such county.

~~(5)(4)~~ In lieu of registering with the sheriff as required by this section, such registration may be made with the Department of Law Enforcement, and is subject to the same terms and conditions as required for registration with the sheriff.

~~(6)(5)~~ This section does not apply to an offender:

(a) Who has had his or her civil rights restored;

(b) Who has received a full pardon for the offense for which convicted;

(c) Who has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than 5 years prior to such time for registration, unless the offender is a fugitive from justice on a felony charge or has been convicted of any offense since release from such incarceration or other sentence or supervision;

(d) Who is a parolee or probationer under the supervision of the United States Parole Commission if the commission knows of and consents to the presence of the offender in Florida or is a probationer under the supervision of any federal probation officer in the state or who has been lawfully discharged from such parole or probation; ~~or~~

(e) Who is a sexual predator and has registered as required under s. 775.21; ~~or,~~

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607.

~~(7)(6)~~ Failure of any such convicted felon to comply with this section constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(8)(7)~~ All laws and parts of laws in conflict herewith are hereby repealed, provided that nothing in this section shall be construed to affect any law of

this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

Section 3. Section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act; definitions; legislative findings, purpose, and intent; criteria; designation; registration; community and public notification; immunity; penalties.—

(1) SHORT TITLE.—This section may be cited as “The Florida Sexual Predators Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Chief of police” means the chief law enforcement officer of a municipality.

(b) “Community” means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.

(c) “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.

(d)(e) “Department” means the Department of Law Enforcement.

(e)(d) “Entering the county” includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).

(f) “Permanent residence” means a place where the person abides, lodges, or resides for 14 or more consecutive days.

(g)(e) “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 a stay of 2 or more weeks.

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(a) Repeat sexual ~~sex~~ offenders, sexual ~~sex~~ offenders who use physical violence, and sexual ~~sex~~ offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual ~~Sex~~ offenders are extremely likely to use physical violence and to repeat their offenses, and

most sexual ~~sex~~ offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual ~~sex~~ offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.03(5). The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. 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.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, and before October 1, 1995:

1. An offender who was found by the court under former s. 775.22 or former s. 775.23 to be a sexual predator is a "sexual predator" if the court made a written finding that the offender was a sexual predator at the time of sentencing, as required by former s. 775.23. Such sexual predator must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to community and public notification as provided in subsection (7). 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 temporarily or permanently resides shall notify members of 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.

2. If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and:

a. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator, or

b. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information which indicated that the offender met the sexual predator criteria based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's sexual predator list, and shall notify the state attorney who prosecuted the offense that triggered the administrative sexual predator designation for offenders described in sub-subparagraph a., or the state attorney of the county where the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides on October 1, 1996, for offenders described in sub-subparagraph b. The state attorney may bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the court then makes a written finding that the offender is a sexual predator, the offender is designated as a sexual predator, and must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to community and public notification requirements as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender is not designated as a sexual predator with respect to that offense, is not required to register or be registered as a sexual predator with the department, and is not subject to the requirements for community and public notification as a sexual predator.

(b) For a current offense committed on or after October 1, 1995, and before October 1, 1996:

1. An offender who was found by the court under former s. 775.22 or former s. 775.23 to be a sexual predator is a "sexual predator" if the court made a written finding that the offender was a sexual predator at the time of sentencing, as required by former s. 775.23. Such sexual predator must register or be registered with the department as provided in subsection (6), and is subject to community and public notification as provided in subsection (7). 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 temporarily or permanently resides 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.

2. If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and:

a. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator, or

b. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information which indicated that the offender met the sexual predator criteria based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's sexual predator list, and shall notify the state attorney who prosecuted the offense that triggered the administrative sexual predator designation for offenders described in sub-subparagraph a., or the state attorney of the county where the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides on October 1, 1996, for offenders described in sub-subparagraph b. The state attorney may bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the court makes a written finding that the offender is a sexual predator, the offender is designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7) ~~provisions under former s. 775.225~~. If the court does not make a written finding that the offender is a sexual predator, the offender is not designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(c) For a current offense committed on or after October 1, 1996, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony meets the criteria of former ss. 775.22(2) and 775.23(2), specifically, the felony is:

a. A capital, life, or ~~first-degree~~ first-degree felony violation of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent, or of chapter 794 or s. 847.0145, or a violation of a similar law of another jurisdiction; ~~or~~

b. An 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; or

~~c.~~ b. Any second-degree second-degree or greater felony violation of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; chapter 794; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; 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 s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145, or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an 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 under this subsection 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.

~~(e) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.~~

(5) SEXUAL PREDATOR DESIGNATION.—For a current offense committed on or after October 1, 1996, an offender is designated as a sexual predator as follows:

(a)1. An offender who meets the sexual predator criteria described in paragraph (4)(c) who is before the court for sentencing for a current offense committed on or after October 1, 1996, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the

offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

2. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent or temporary residence permanently or temporarily resides in this state meets the sexual predator criteria described in paragraph (4)(c) because the offender committed a similar violation in another jurisdiction on or after October 1, 1996, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides 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.

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 described in this section. 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 the department. 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.

(b) 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 the department within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c)(b) If the Department of Corrections, the department, 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 as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence temporarily or permanently resides upon first entering the state for offenders described in subparagraph (a)2. 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, ~~and the department and other law enforcement agencies are not authorized to inform the community and the public of the offender's presence. The offender must comply with the convicted felon registration requirements under s. 775.13.~~ The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction in which the order was issued which states that such designation has been removed, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator must register with the department by providing the following information to the department:

1. Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and, address of any current temporary residence, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department 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 a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the 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, of the vessel, live-aboard vessel, or houseboat.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel, treatment, and abuse registry records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections' office that is responsible for supervising the sexual predator.

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

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

(e)(b) If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility, and establishes or maintains a residence permanently or temporarily resides in the state, the sexual predator shall initially register in person at an office of the department, or at the sheriff's office in the county in which the predator establishes or maintains a residence permanently or temporarily resides, within 48 hours after establishing permanent or temporary residence in this state. If a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f)(e) Within 48 hours after ~~Subsequent to~~ the initial registration required under paragraph (a) or paragraph (e)(b), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of initial registration within 48 hours after any change in the predator's permanent or temporary residence. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to

comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles 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 a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles 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, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g)(d) Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change of the predator's residence, the predator shall report in person to a driver's license office, ~~regardless of whether the predator's residence has changed~~, and shall be subject to the requirements specified in paragraph (f)(c). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

(h)(e) 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 permanently or temporarily resides within 48 hours after the sexual predator registers with the department.

(i) A sexual predator who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or the department 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 promptly provide to the department the information received from the sexual predator. The department shall 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 predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator 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 predator indicated he or she would leave this state, notify the sheriff or the department, whichever agency is the agency to which the sexual 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 predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator 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 the department in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(k)(9)~~1. The department is responsible for the on-line maintenance of current information regarding each registered sexual predator. The department 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. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free "900" telephone number for this purpose. When the department provides information regarding a registered sexual 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 that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

~~(l)(6)~~ A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual 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 any felony sex offense that met the criteria for the sexual predator designation. However, a sexual predator who was designated as a sexual predator by a court before October 1, 1998, and who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 10 years and has 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 the sexual predator

resides for the purpose of removing the sexual predator designation. A sexual predator who was designated a sexual predator by a court on or after October 1, 1998, who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years, and who has 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 the sexual predator resides for the purpose of removing the sexual predator designation. The court may ~~has the discretion to~~ grant or deny such relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with federal standards applicable to the removal of the designation as a sexual predator, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual predator may again petition the court for relief, subject to the standards for relief provided in this paragraph. Unless specified in the order, a sexual predator who is granted relief under this paragraph must comply with the requirements for registration as a sexual offender and other requirements provided under s. 943.0435 or s. 944.607. If a petitioner obtains an order from the court that imposed the order designating the petitioner as a sexual predator which removes such designation, the petitioner 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.

(7) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. 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 ~~temporarily or permanently resides~~ shall notify members of 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. Information provided to members of the community and the public regarding a sexual predator must include:

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

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators. ~~The department, in consultation and cooperation with the Department of Highway Safety and Motor Vehicles, shall determine the feasibility of requiring sexual predators to have a special designation on any drivers license, identification card, or license tag issued in this state.~~

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with federal requirements that apply to the laws of this state governing sexual predators. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections. The department shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections.

(9)(8) 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, or 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 under this section.

(10)(9) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register or who fails, after registration, to maintain, acquire, or renew a driver's license or identification card or provide required location information, or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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 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 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.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, 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.

Section 4. Section 775.24, Florida Statutes, is created to read:

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(1) The Legislature finds that, for the purpose of approving a plea agreement or for other reasons, certain courts enter orders that effectively limit or nullify requirements imposed upon sexual predators and sexual offenders pursuant to the laws of this state and prevent persons or entities from carrying out the duties imposed, or exercising the authority conferred, by such laws. The laws relating to sexual predators and sexual offenders are substantive law. Furthermore, the Congress of the United States has expressly encouraged every state to enact such laws, and has provided that, to the extent that a state's laws do not meet certain federal requirements, the state will lose significant federal funding provided to the state for law enforcement and public safety programs. Unless a court that enters such an order determines that a person or entity is not operating in accordance with the laws governing sexual predators or sexual offenders, or that such laws or any part of such laws are unconstitutional or unconstitutionally applied, the court unlawfully encroaches on the Legislature's exclusive power to make laws and places at risk significant public interests of the state.

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

(3) If the court enters an order that affects an agency's performance of a duty imposed under the laws governing sexual predators or sexual offenders, or that limits the agency's exercise of authority conferred under such laws, the Legislature strongly encourages the affected agency to file a motion in the court that entered such order. The affected agency may, within 60 days after the receipt of any such order, move to modify or set aside the order or, if such order is in the nature of an injunction, move to dissolve the injunction. Grounds for granting any such motion include, but need not be limited to:

(a) The affected agency was not properly noticed.

(b) The court is not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is illegally applied or unless the statute or the challenged part of it is unconstitutional on adjudicated grounds.

(c) Jurisdiction may not be conferred by consent of the parties.

(d) To the extent that the order is based upon actions the agency might take, the court's order is premature and, if and when such actions are taken, these actions may be challenged in appropriate proceedings to determine their enforceability.

(e) The injunction affects the public interest and would cause injury to the public.

(f) The order creates an unenforceable, perpetual injunction.

(g) The order seeks to restrict the agency in the performance of its duties outside the court's territorial jurisdiction.

Section 5. Section 775.25, Florida Statutes, is created to read:

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.

Section 6. Section 943.043, Florida Statutes, is amended to read:

943.043 Toll-free telephone number; sexual predator and sexual offender sex-offender information.—

(1) The department 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.

(2)(4) The department shall provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual sex offenders and may provide other information reported to the department which is not confidential or exempt from public disclosure and which is reported to the department by the Department of Corrections as provided in s. 944.607 or by a sex offender as provided in s. 943.0435.

(3)(2) The department shall provide to any person, upon request and at a reasonable cost determined by the department, a copy of the photograph of any sexual sex 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.

(4)(3) The department, and its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good-faith good-faith compliance with this section and will shall be presumed to have acted in good faith by reporting information. The presumption of good faith is not overcome if technical or clerical errors are made by the department, and its personnel, or any individual or entity acting at the request or upon the direction of the department in reporting the information, if the department and its personnel are unable to report information because the information has not been provided or reported by a person or agency required to provide or report the information to the department, or if the department, and its personnel, or any individual or entity acting at the request or upon the direction of the department reports report information that was falsely reported without the knowledge of the department, and its personnel, or such individual or entity.

Section 7. Section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual Sex offenders required to register with report to the department; penalty.—

(1) As used in this section, the term:

(a) "Sexual Sex offender" means a person who has been:

1. Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar analogous offenses in another jurisdiction: 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; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

2. Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of

subparagraph 1., a sanction imposed 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.

(b) "Convicted" means that, regarding the person's offense, there has been a determination of guilt the person has been determined guilty as a result of a plea or 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.

(c) "Permanent residence" and "temporary residence" have the same meaning ascribed in s. 775.21.

(2) A ~~sexual sex~~ offender shall initially report in person at an office of the department, or at the sheriff's office in the county in which the offender establishes or maintains a permanent or temporary residence permanently or temporarily resides, within 48 hours after establishing permanent or temporary residence in this state. ~~A sex offender permanently resides in this state if the offender abides, lodges, or resides in a place for more than 2 consecutive weeks. A sex offender temporarily resides in this state if the offender abides, lodges, or resides in a place for 2 consecutive weeks or less, excluding a stay of 2 consecutive weeks or less at a different residence due to a vacation or an emergency or special circumstance that requires the sex offender to leave his or her place of permanent or temporary residence for 2 weeks or less.~~ The ~~sexual sex~~ offender shall provide his or her name, date of birth, social security number, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, occupation and place of employment, address of permanent or legal residence, or address of any current temporary residence, including a rural route address and a post office box, date and place of each conviction, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department 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's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the 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, of the vessel, live-aboard vessel, or houseboat. If a ~~sexual sex~~ offender reports at the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the ~~sexual sex~~ offender.

(3) Within 48 hours after the ~~Subsequent to the~~ initial report required under subsection (2), a ~~sexual sex~~ offender shall report in person at a driver's

license office of the Department of Highway Safety and Motor Vehicles ~~within 48 hours after any change in the offender's permanent or temporary residence.~~ At the driver's license office the ~~sexual sex~~ offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The ~~sexual sex~~ offender shall identify himself or herself as a ~~sexual sex~~ offender who is required to comply with this section and shall provide proof that the sexual offender initially reported as required in subsection (2). The ~~sexual sex~~ offender shall provide any of the information specified in subsection (2), if requested. The ~~sexual sex~~ offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of ~~sexual sex~~ offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

(c) Provide, upon request, any additional information necessary to confirm the identity of the ~~sexual sex~~ offender, including a set of fingerprints.

(4) Each time a ~~sexual sex~~ offender's driver's license or identification card is subject to renewal, and within 48 hours after any change in the offender's permanent or temporary residence, the offender shall report in person to a driver's license office, ~~regardless of whether the offender's residence has changed,~~ and shall be subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by ~~sexual sex~~ offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in ss. 943.043, 943.0435, and 944.606.

(5) This section does not apply to a ~~sexual sex~~ offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

(6) The department shall verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of the Department of Corrections in a manner that is consistent with federal requirements.

(7) A sexual offender who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or the department 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 promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual 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 indicated he or she would leave this state, notify the sheriff or department, whichever agency is the agency to which the sexual offender 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 that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual 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 the department in the manner required by this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9)(6) A sexual ~~sex~~ offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(10)(7) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, and the personnel of those departments, and any individual or entity acting at the request or upon the direction of any of those departments are immune from civil liability for damages for ~~good-faith~~ ~~good-faith~~ compliance with the requirements of this section, and shall be presumed to have acted in good faith in compiling, recording, and reporting information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, or the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a ~~sexual~~ ~~sex~~ offender fails to report or falsely reports his or her current place of permanent or temporary residence.

(11) A sexual offender must maintain registration with the department for the duration of his or her life, unless the sexual offender 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 any felony sex offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, 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 felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender. The court may grant or deny such relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with federal standards applicable to the removal of registration requirements for a sexual offender, and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may

otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

Section 8. Section 943.325, Florida Statutes, is amended to read:

943.325 Blood specimen testing for DNA analysis.—

(1)(a) Any person convicted, or who was previously convicted and is still incarcerated, in this state for any offense or attempted offense defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s. 812.133, or s. 812.135, and who is within the confines of the legal state boundaries, shall be required to submit two specimens of blood to a Department of Law Enforcement designated testing facility as directed by the department.

(b) For the purpose of this section, the term "any person" shall include both juveniles and adults committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice or committed to a county jail.

(2) The withdrawal of blood for purposes of this section shall be performed in a medically approved manner and only under the supervision of a physician, registered nurse, licensed practical nurse, or duly licensed medical personnel.

(3) Upon a conviction of any person for any offense under paragraph (1)(a) which results in the commitment of the offender to a county jail, correctional facility, or juvenile facility, the entity responsible for the facility shall assure that the blood specimens required by this section are promptly secured and transmitted to the Department of Law Enforcement. If the person is not incarcerated following such conviction, the person may not be released from the custody of the court or released pursuant to a bond or surety until the blood specimens required by this section have been taken. The chief judge of each circuit shall, in conjunction with the sheriff or other entity that maintains the county jail, assure implementation of a method to promptly collect required blood specimens and forward the specimens to the Department of Law Enforcement. The Department of Law Enforcement, in conjunction with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, shall develop a statewide protocol for securing the blood specimens of any person required to provide specimens under this section. Personnel at the jail, correctional facility, or juvenile facility shall implement the protocol as part of the regular processing of offenders.

(4) If any blood specimens submitted to the Department of Law Enforcement under this section are found to be unacceptable for analysis and use or cannot be used by the department in the manner required by this section,

the Department of Law Enforcement may require that another set of blood specimens be taken as set forth in subsection (11).

~~(5)~~⁽³⁾ The Department of Law Enforcement shall provide the specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens. The specimens shall thereafter be forwarded to the designated testing facility for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

~~(6)~~⁽⁴⁾ The analysis, when completed, shall be entered into the automated database maintained by the Department of Law Enforcement for such purpose, and shall not be included in the state central criminal justice information repository.

~~(7)~~⁽⁵⁾ The results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(8)~~⁽⁶⁾ The Department of Law Enforcement and the statewide criminal laboratory analysis system shall establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules. The system shall be available to all criminal justice agencies.

~~(9)~~⁽⁷⁾ The Department of Law Enforcement shall:

(a) Receive, process, and store blood samples and the data derived therefrom furnished pursuant to subsection (1) or pursuant to a requirement of supervision imposed by the court or the Parole Commission with respect to a person convicted of any offense specified in subsection (1).

(b) Collect, process, maintain, and disseminate information and records pursuant to this section.

(c) Strive to maintain or disseminate only accurate and complete records.

(d) Adopt rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit blood samples pursuant to this section.

~~(10)~~⁽⁸⁾(a) The court shall include in the judgment of conviction for an offense specified in this section, or a finding that a person described in subsection (1) violated a condition of probation, community control, or any other court-ordered supervision, an order stating that blood specimens are required to be drawn by the appropriate agency in a manner consistent with this section and, unless the convicted person lacks the ability to pay, the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement. The reimbursement payment may be deducted from any existing balance in the inmates's bank account. If the account balance is insufficient

to cover the cost of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement, 50 percent of each deposit to the account must be withheld until the total amount owed has been paid. If the judgment places the convicted person on probation, community control, or any other court-ordered supervision, the court shall order the convicted person to submit to the drawing of the blood specimens as a condition of the probation, community control, or other court-ordered supervision. For the purposes of a person who is on probation, community control, or any other court-ordered supervision, the collection requirement must be based upon a court order. If the judgment sentences the convicted person to time served, the court shall order the convicted person to submit to the drawing of the blood specimens as a condition of such sentence.

(b) The appropriate agency shall cause the specimens to be drawn as soon as practical after conviction but, in the case of any person ordered to serve a term of incarceration as part of the sentence, the specimen shall be drawn as soon as practical after the receipt of the convicted person by the custodial facility. For the purpose of this section, the appropriate agency shall be the Department of Corrections whenever the convicted person is committed to the legal and physical custody of the department. Conviction information contained in the offender information system of the Department of Corrections shall be sufficient to determine applicability under this section. The appropriate agency shall be the sheriff or officer in charge of the county correctional facility whenever the convicted person is placed on probation, community control, or any other court-ordered supervision or form of supervised release or is committed to the legal and physical custody of a county correctional facility.

(c) Any person previously convicted of an offense specified in this section, or a crime which, if committed in this state, would be an offense specified in this section, and who is also subject to the registration requirement imposed by s. 775.13, shall be subject to the collection requirement of this section when the appropriate agency described in this section verifies the identification information of the person. The collection requirement of this section does not apply to a person as described in s. 775.13(6) ~~s. 775.13(5)~~.

(d) For the purposes of this section, conviction shall include a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication or, in the case of a juvenile, the finding of delinquency.

(e) If necessary, the state or local law enforcement or correctional agency having authority over the person subject to the sampling under this section shall assist in the procedure. The law enforcement or correctional officer so assisting may use reasonable force if necessary to require such person to submit to the withdrawal of blood. The withdrawal shall be performed in a reasonable manner. A hospital, clinical laboratory, medical clinic, or similar medical institution; a physician, certified paramedic, registered nurse, licensed practical nurse, or other personnel authorized by a hospital to draw blood; a licensed clinical laboratory director, supervisor, technologist, or technician; or any other person who assists a law enforcement officer is not civilly or criminally liable as a result of withdrawing blood specimens according to accepted medical standards when requested to do so by a law

enforcement officer or any personnel of a jail, correctional facility, or juvenile detention facility, regardless of whether the convicted person resisted the drawing of blood specimens.

(11) If the Department of Law Enforcement determines that a convicted person who is required to submit blood specimens under this section has not provided the specimens, the department, a state attorney, or any law enforcement agency may apply to the circuit court for an order that authorizes taking the convicted person into custody for the purpose of securing the required specimens. The court shall issue the order upon a showing of probable cause. Following issuance of the order, the convicted person shall be transported to a location acceptable to the agency that has custody of the person, the blood specimens shall be withdrawn in a reasonable manner, and the person shall be released if there is no other reason to justify retaining the person in custody. The agency that takes the convicted person into custody may, but is not required to, transport the person back to the location where the person was taken into custody.

(12) Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the blood specimens required under this section.

(13) If a court, a law enforcement agency, or the Department of Law Enforcement fails to strictly comply with this section or to abide by a state-wide protocol for collecting blood specimens, such failure is not grounds for challenging the validity of the collection or the use of a specimen, and evidence based upon or derived from the collected blood specimens may not be excluded by a court.

Section 9. Subsection (4) is added to section 944.605, Florida Statutes, to read:

944.605 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(4) An inmate who refuses to submit to the taking of a digitized photograph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(a) "Conviction" means a determination of guilt which that is the result of ~~a plea or a trial or the entry of a plea of guilty or nolo contendere,~~ regardless of whether adjudication is withheld. A conviction for a violation of a similar law of another jurisdiction 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.

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01 or s. 782.02, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; a felony violation of chapter 794; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, or a violation of a similar law of another jurisdiction, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

(2) The Legislature finds that sexual offenders, especially those who have committed their offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount governmental interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing sexual offender information to law enforcement agencies and to persons who request such information, and releasing such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety.

(3)(a) The department must provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department must provide: the sexual offender's name and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; and the offender's intended residence address, if known. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in paragraph (a) and any information specified in subparagraph 2, that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

(b) The department must provide the information described in subparagraph (a)1. to:

1. The sheriff of the county from where the sexual offender was sentenced;
2. The sheriff of the county and, if applicable, the police chief of the municipality, where the sexual offender plans to reside;
3. The Florida Department of Law Enforcement; and
4. Any person who requests such information,

either within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if an offender is released earlier than anticipated. All such information provided to the Department of Law Enforcement must be available electronically as soon as the information is in the agency's database and must be in a format that is compatible with the requirements of the Florida Crime Information Center.

(c) Upon request, the department must provide the information described in subparagraph (a)2. to:

1. The sheriff of the county from where the sexual offender was sentenced; and
2. The sheriff of the county and, if applicable, the police chief of the municipality, where the sexual offender plans to reside,

either within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if an offender is released earlier than anticipated.

(d) Upon receiving information regarding a sexual offender from the department, the Department of Law Enforcement, the sheriff or the chief of police shall provide the information described in subparagraph (a)1. to any individual who requests such information and may release the information to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) This section authorizes the department or any law enforcement agency to notify the community and the public of a sexual offender's presence in the community. However, with respect to a sexual offender who has been found to be a "sexual predator" under chapter 775, the Florida Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the sexual predator's presence in the community, as provided in chapter 775. ~~Release of information pursuant to this section does not constitute unauthorized public disclosure of information that relates to sexual predators under chapter 775.~~

(5) An elected or appointed official, public employee, school administrator or employee, or 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 under this section.

Section 11. Section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual ~~sex~~ offenders.—

(1) As used in this section, the term:

(a) "Sexual ~~Sex~~ offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar analogous offenses in another jurisdiction: 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; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph.

(b) "Conviction" means a determination of guilt which is the ~~as a result of a plea of 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.

(2) The clerk of the court of that court which convicted and sentenced the sexual offender for the offense or offenses described in subsection (1) shall forward to the department and the Department of Law Enforcement a certified copy of any order entered by the court imposing any special condition or restriction on the sexual offender 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.

(3) 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."

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated must register with the Department of Corrections and provide the following information: name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; and permanent or legal residence and address of temporary residence, including any rural route address or post office box. The Department of Corrections shall verify the address of each sexual offender in the manner described in s. 775.21 and s. 943.0435.

(5)(2) In addition to notification and transmittal requirements imposed by any other provision of law, the department shall compile information on

any sexual ~~sex~~ offender and provide the information to the Department of Law Enforcement. The information shall be made available electronically to the Department of Law Enforcement as soon as this information is in the department's database and must be in a format that is compatible with the requirements of the Florida Crime Information Center.

~~(6)(3)~~ The information provided to the Department of Law Enforcement must include:

(a) The information obtained from the sexual offender under subsection (4) name of the sex offender and any alias, if known;

(b) The sexual ~~sex~~ offender's most current address and place of permanent ~~and~~ ~~or~~ temporary residence, including the name of the county or municipality in which the offender permanently or temporarily resides and, if known, the intended place of permanent or temporary residence upon satisfaction of all sanctions;

(c) The legal status of the sexual ~~sex~~ offender and the scheduled termination date of that legal status;

(d) The location of, and local telephone number for, any Department of Corrections' office ~~that of probation, community control, parole, conditional release, or control release~~ which is responsible for supervising the sexual ~~sex~~ offender;

(e) An indication of whether the victim of the offense that resulted in the offender's status as a sexual ~~sex~~ offender was a minor;

~~(f) A physical description of the sex offender;~~

~~(f)(g)~~ The offense or offenses at conviction which resulted in the determination of the offender's status as a sex offender; and

~~(g)(h)~~ A digitized photograph of the sexual ~~sex~~ offender which must have been taken within 60 days before the offender is released from the custody of the department or a private correctional facility by expiration of sentence under s. 944.275 or must have been taken by January 1, 1998, or within 60 days after the onset of the department's supervision of any sexual ~~sex~~ offender who is on probation, community control, conditional release, parole, provisional release, or control release or who is supervised by the department under the Interstate Compact Agreement for Probationers and Parolees. If the sexual ~~sex~~ offender is in the custody of a private correctional facility, the facility shall take a digitized photograph of the sexual ~~sex~~ offender within the time period provided in this paragraph and shall provide the photograph to the department.

If any information provided by the department changes during the time the sexual ~~sex~~ offender is under the department's control, custody, or supervision, the department shall, in a timely manner, update the information and provide it to the Department of Law Enforcement in the manner prescribed in subsection (2).

(7) If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender and forward the information to the Department of Law Enforcement. The custodian of the local jail shall also take a digitized photograph of the sexual offender while the offender remains in custody and shall provide the digitized photograph to the Department of Law Enforcement.

(8) If the sexual offender is under federal supervision, the federal agency responsible for supervising the sexual offender may forward to the Department of Law Enforcement any information regarding the sexual offender which is consistent with the information provided by the department under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the Department of Law Enforcement for purposes of public notification.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(10).

(10) The failure of a sexual offender to submit to the taking of a digitized photograph, or to otherwise comply with the requirements of this section, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11)(4) The department, the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, the Department of Corrections, and its 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~~ good-faith compliance with this section, and shall be presumed to have acted in good faith in compiling, recording, ~~reporting, or~~ and providing information. The presumption of good faith is not overcome if technical or clerical errors are made by the department, ~~the Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, and its 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 compiled, recorded, or provided by the department and its personnel is incomplete or incorrect because the information has not been provided to the department by a person or agency required to provide the information, or because the if the department and its personnel compile, record, or provide information that was not reported or was falsely reported without the knowledge of the department and its personnel.~~

Section 12. Subsection (4) is added to section 947.177, Florida Statutes, to read:

947.177 Inmate release; notice by Department of Corrections, Control Release Authority, or Parole Commission.—

(4) An inmate who refuses to submit to the taking of a digitized photograph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. Subsection (15) is added to section 948.01, Florida Statutes, to read:

948.01 When court may place defendant on probation or into community control.—

(15) 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.

Section 14. Subsection (5) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation or community control.—

(5) Conditions imposed pursuant to this subsection, as specified in paragraphs (a) and (b), 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.

(a) Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation 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:

1. 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.

2. 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.

3. 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.

4. 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.

5. If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on unsupervised contact with a child under the age of 18, unless authorized by the sentencing court 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(b) 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 of this subsection, the court must impose the following conditions of probation or community control:

1. 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.

2. Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

3. A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

4. 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.

5. 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.

Section 15. This section and section 5 of this act shall take effect upon becoming a law; sections 1, 2, 4, 7, 9, 13, and 14 of this act shall take effect July 1, 1998; and sections 3, 6, 8, 10, 11, and 12 of this act shall take effect October 1, 1998.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.

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Welcome Lindsay McIntire!


Charting a course for public safety

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 Name: Patrick James Clark Person #: 3305
 Person Type: Offender DC#: 145439
 Legal Status: Released SID#: FL04205424
 DOB: 09/29/1965 License: [REDACTED]
 SSN: [REDACTED]

Primary Information

Race: Sex:
 Height: Weight:
 Hair Color: Eye Color:
 Skin Tone: DNA Taken:
 FBI Number: [REDACTED] FDLE Number:
 DC Number: DJJ Number:
 Record Status:
 High Risk: High Risk Act. Date:
 Driver License Marked: Flyer Wanted?
 Physical File?:
 Display Status: Display Reason:

Legal Status Information

*Legal Status: Lock Legal Status
 Effective Date: Termination Date:
 Show History Date of Death:

Registration Requirement Information

*Reg. Requirement: Lock Reg. Requirement
 *Reg. Reason:
 Show History

Added By: Date Added:
 Modified By: Date Modified:

Subject Types

Subject Type	Category	Effective Date	Termination Date	PCN	Date
<input checked="" type="checkbox"/> Offender	Qualifier			T005197994	07/21/2006

License Information

[REDACTED]

License Number	License Type	Display Status	Date
[REDACTED]	Operator License	Everywhere	03/05/2010

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EXHIBIT C

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO: 1995-CF-10355

DIVISION: 19

STATE OF FLORIDA,

Plaintiff,

v.

PATRICK CLARK,

Defendant.

ORDER DIRECTING STATE RESPONSE

THIS CAUSE came before the court on Defendant Patrick Clark's "Amended Verified Motion for Postconviction Relief" Pursuant to Florida Rule of Criminal Procedure 3.850, filed on November 4, 2010.

It is **ORDERED** that the Office of the State Attorney shall file a Response to Defendant's Motion within **60 days** from the date of this Order, which shall either contain matters of law or of record showing that the Defendant is not entitled to relief or otherwise framing issues in the event that a hearing on the motion is warranted.

The Response shall consider Defendant's Motion pursuant to Florida Rule of Criminal Procedure 3.800, as well as Florida Rule of Criminal Procedure 3.850.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on the 5 day of December, 2011.

JANET THORPE

Janet C. Thorpe
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by U. S. Mail or hand delivery to **Robert Sirianni, Jr., Esquire**, Brownstone, P.A., 400 North New York Avenue, Suite 215, Winter Park, Florida 32789, and to **Dick Jucknath, Esquire**, Office of the State Attorney, 415 N. Orange Avenue, Orlando, Florida 32801, on the 6 day of December, 2011.



Judicial Assistant

EXHIBIT D

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff

CASE NO: 48-1995-CF-010355-A-O

vs.

DIVISION: 19

PATRICK CLARK,
Defendant

STATE'S MOTION TO REMOVE COURT FILE(S)

COMES NOW THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, and moves this Court to allow the removal of the court file(s) in the aforementioned cases from the court facility and as grounds would show:

1. The removal of the court file from the court facility is necessary because this Court has ordered the State of Florida to prepare a response to the Defendant's Motion for Postconviction Relief.
2. The court file must be reviewed to determine the procedural history of the case, and to determine which if any documents contained in the files and records conclusively refute the allegations made by the Defendant.
3. In addition, for the court's benefit, undersigned counsel routinely attaches pertinent documents contained in the record which support undersigned counsel's assertion that relief can either be properly granted or denied.
4. Should the Court grant this Motion, Movant and Movant's duly authorized representatives, including, but not limited to employees and associates, shall comply with the procedures stated in this Court's Order and in Administrative Order 07-98-02.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail to postconviction counsel Robert Siriani, Jr. Esquire, Brownstone, P.A. 400 North New York Avenue, Suite 215, Winter Park, Florida 32789, on the 7 day of January, 2012.

COPY

Chris Lerner, FBN 211389
Assistant State Attorney
415 N. Orange Ave., P.O. Box 1673
Orlando, FL 32801 (407)836-2406

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff

vs.

PATRICK CLARK,
Defendant

CASE NO: 48-1995-CF-010355-A-O

DIVISION: 19

ORDER ON STATE'S MOTION TO REMOVE COURT FILE(S)

THIS CAUSE having come before me upon the State's Motion for Removal of Court File(s), and the Court having reviewed said Motion and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. **Motion is granted.**
2. The Clerk of the Court is ordered to allow CHRIS LERNER, Movant and Movant's duly authorized representative to remove the court file(s), including the record on appeal, from the court facility for the purposes of reviewing and copying pertinent documents to respond to a motion for postconviction relief.
3. Movant and Movant's duly authorized representatives, including, but not limited to, employees and associates, shall comply with the procedures stated in Administrative Order No. 07-98-02 governing the removal of court files. Failure of Movant and Movant's duly authorized representative to comply with said procedures shall constitute a violation of this Order and Administrative Order No. 07-98-02 and the Clerk is authorized to suspend or revoke removal privileges for such violation.
4. Movant and Movant's duly authorized representatives shall keep the court file with the

utmost care and security. Movant and Movant's duly authorized representatives shall not insert, delete, destroy, or make an entry on any paper or the file folder itself in the court file(s) and shall return the court file(s) intact. Movant and Movant's duly authorized representative shall not release the court file to any third party, or firm, nor shall the court file(s) be given to any commercial printer or copy center for copying purposes.

5. Movant or Movant's duly authorized representative shall return the court file(s) to the Clerk's office within three (3) days (or earlier should the Court or Clerk deem necessary) from the date the court file is checked out to Movant or to Movant's duly authorized representative by the Clerk.

DONE AND ORDERED at Orlando, Florida this _____ day of January, 2012.

HONORABLE JANET C. THORPE
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail postconviction counsel Robert Siriani, Jr. Esquire, Brownstone, P.A. 400 North New York Avenue, Suite 215, Winter Park, Florida 32789, to Chris Lerner, ASA, Appellate Team, 415 N. Orange Avenue, Orlando, FL 32801, on this _____ day of January, 2012.

Judicial Assistant

EXHIBIT E

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff

vs.

CASE NO: 48-1995-CF-010355-A-O

DIVISION: 19

PATRICK CLARK,

Defendant

ORDER ON STATE'S MOTION TO REMOVE COURT FILE(S)

THIS CAUSE having come before me upon the State's Motion for Removal of Court File(s), and the Court having reviewed said Motion and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. **Motion is granted.**
2. The Clerk of the Court is ordered to allow CHRIS LERNER, Movant and Movant's duly authorized representative to remove the court file(s), including the record on appeal, from the court facility for the purposes of reviewing and copying pertinent documents to respond to a motion for postconviction relief.
3. Movant and Movant's duly authorized representatives, including, but not limited to, employees and associates, shall comply with the procedures stated in Administrative Order No. 07-98-02 governing the removal of court files. Failure of Movant and Movant's duly authorized representative to comply with said procedures shall constitute a violation of this Order and Administrative Order No. 07-98-02 and the Clerk is authorized to suspend or revoke removal privileges for such violation.
4. Movant and Movant's duly authorized representatives shall keep the court file with the

utmost care and security. Movant and Movant's duly authorized representatives shall not insert, delete, destroy, or make an entry on any paper or the file folder itself in the court file(s) and shall return the court file(s) intact. Movant and Movant's duly authorized representative shall not release the court file to any third party, or firm, nor shall the court file(s) be given to any commercial printer or copy center for copying purposes.

5. Movant or Movant's duly authorized representative shall return the court file(s) to the Clerk's office within three (3) days (or earlier should the Court or Clerk deem necessary) from the date the court file is checked out to Movant or to Movant's duly authorized representative by the Clerk.

DONE AND ORDERED at Orlando, Florida this 11 day of January, 2012.

Judge Janet C. Thorpe

HONORABLE JANET C. THORPE
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail postconviction counsel Robert Siriani, Jr. Esquire, Brownstone, P.A. 400 North New York Avenue, Suite 215, Winter Park, Florida 32789, to Chris Lerner, ASA, Appellate Team, 415 N. Orange Avenue, Orlando, FL 32801, on this 12 day of January, 2012.



Judicial Assistant

EXHIBIT F

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 48-1995-CF-10355-0

vs.

DIVISION: 19

PATRICK CLARK
_____ /

**STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR POSTCONVICTION RELIEF**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and in response to this court's order to respond to defendant's motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850, and Chapter 86, Florida Statutes, states as follows:

PROCEDURAL HISTORY

On February 29, 1996 Defendant pleaded nolocontendre, in the instant case, as charged, to Count 1, Lewd Act on a child, in violation of Florida Statutes, Sec. 800.04(1). Defendant was sentenced to two days time served followed by two years of supervised probation. Thereafter, on April 26, 1996 Defendant's motion to convert the supervised probation to administrative probation was granted.

In July of 1999 Defendant wrote a letter to the court claiming that the father of alleged victim in the instant case had approached him and informed him that the whole family had lied. Defendant further informed the court that he was writing in the hopes that he could get the decision reversed. The court sent

Defendant a letter suggesting that his attorney should handle the matter since he was represented. That letter was returned "undeliverable as addressed".

Thereafter on November 4, 2010, Defendant filed the instant Amended Verified Motion For Post-Conviction Relief. On December 6, 2011 the court entered an order for a state response within 60 days.

DEFENDANT'S CLAIMS

In the first paragraph of his motion Defendant "moves this Court of vacate, set aside or correct the sentence delivered in this matter". The motion goes on to present five claims each of which seeks either declaratory or injunctive relief *vis-à-vis* the Florida Department of Law Enforcement (FDLE hereafter). Defendant presents no argument directed to why his 1996 judgment and sentence should be set aside or corrected. Therefore, this response will address the specific relief Defendant requests in each of his five following specific claims:

I DECLARATORY JUDGMENT

WHEN THE DEFENDANT ENTERED HIS PLEA TO SECTION 800.04(1) FLORIDA STATUTES (1995), HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435, FLORIDA STATUTES (1998)

II EX POST FACTO

APPLICATION OF SECTION 943.0435 OF THE 1998 FLORIDA STATUTES TO THE DEFENDANT VIOLATES THE EX POST FACTO CLAUSE

III DECLARATORY JUDGMENT

THE DEFENDANT'S DUE PROCESS RIGHTS ARE BEING VIOLATED BECAUSE HE IS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435 OF THE 1998 FLORIDA STATUTES

IV INJUNCTIVE RELIEF

THE FDLE SHOULD BE ENJOINED FROM ENFORCING THE SEX OFFENDER REGISTRATION REQUIREMENTS AGAINST THE DEFENDANT AS SUCH REQUIREMENTS ARE AN IMPROPER RETROACTIVE SENTENCE ENHANCEMENT

V DECLARATORY RELIEF

APPLICATION OF SECTION 943.0435, FLORIDA STATUTES (1998) TO THE DEFENDANT VIOLATES THE EIGHTH AMENDMENT

STATE'S RESPONSE

I DECLARATORY JUDGMENT

WHEN THE DEFENDANT ENTERED HIS PLEA TO SECTION 800.04(1) FLORIDA STATUTES (1995), HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 943.0435, FLORIDA STATUTES (1998)

In this claim Defendant is asking for a declaratory judgment determining that Defendant was not convicted of Sec. 800.04(1) within the meaning of Sec. 943.0435 Florida Statutes (1998), and that therefore, Defendant is not required to register under Sec. 943.0435.

Claim I does not merit relief under the Florida Rules of Criminal Procedure

Florida Rule of Criminal Procedures (FRCP hereafter) 3.850 and 3.800 provide the opportunity for a Defendant to "vacate, set aside, or correct sentence" or for "correction, reduction, and

modification of his sentence". These are the sole remedies specified in those criminal rules. The rules do not provide for the declaratory relief that Defendant requests. Therefore, 3.850 and 3.800 have no application to Claim I.

Time Bar as to FRCP 3.850

Defendant is also time barred from any claim under FRCP 3.850. This is so because that rule requires that a motion pursuant to that rule be filed within two years of the point in time that the facts on which the claim is predicated were known or could have been discovered by due diligence. See FRCP 3.850 (b)(1). Defendant admits in his sworn allegations that in the late 1990's he experienced all manner of problems as a result of being on a "list", and that police came to his home and told him that he could not live in the same household as his girlfriend and her child. Moreover, from what he says in his sworn allegations, Defendant clearly knew soon after 1998 that he was now included on a list of Florida Sex Offenders. Specifically, Defendant complains on page 11 of the sworn allegations attached to his motion that "In 2000 I receive [sic] a phone call from Det. Saliciedo telling me there was a warrant for my arrest for leaving Florida without telling FDLE."

Because Defendant waited another 9 - 10 years after this call to file the instant motion, it clearly is untimely for any relief under FRCP 3.850. See *Harvey v. State*, 17 So.3d 890 (Fla. 4th DCA 2009) (trial court properly denied, as untimely, postconviction

attack on a conviction that was more than 20 years old, that trial court found him to be a sexual predator without giving him an opportunity to be heard or present argument that he did not qualify as a sexual predator).

FRCP 3.800(a) is inapplicable

Claim I also is ineligible for relief under FRCP 3.800(a) because the claim cannot be established from the face of the record itself. This is obviously so because, as Defendant himself alleges, the statute requiring him to register came into being after all of the documents relating to his plea and sentence were filed. Most of Defendant's allegations involve facts that occurred outside of the face of the record and well after his case and probation were over. Accordingly, Defendant is not entitled to seek relief under FRCP 3800(a). See *Saintelien v. State*, 990 So.2d 494, 497 (Fla.2008) (A defendant may seek correction of an allegedly erroneous sexual predator designation by filing a motion to correct an illegal sentence, only where it is apparent from the face of the record that the defendant did not meet the criteria for designation as a sexual predator).

Claim I should be denied based on the doctrine of laches

Without regard to the underlying legal theories as to why he should have been entitled to relief in the instant case, any claim asserted by Defendant at this point should also be denied under the equitable doctrine of laches. Defendant alleges no credible fact

to show why he could not have commenced his claim at least in the year 2000 when, from what he himself alleges under oath, he was specifically notified of the registration requirements. Yet, he waited another decade to file the instant motion. Defendant's allegations also establish the prejudice resulting from his delay, to wit: he is now free, without contradiction, to make all sorts of allegations about promises that were made to him as part of the plea, because as he admits, a transcript of the plea and sentencing hearing no longer exists. (See Instant Motion, 1, numbered preliminary statement 6).

In *McRay v. State*, 699 So.2d 1366 (Fla. 1997), the court addressed a similar untimely claim and concluded that a five year delay was sufficient to trigger the application of laches to bar a postconviction claim:

This case represents a perfect example of why the doctrine of laches should be applied to bar some collateral claims for relief. McCray has waited fifteen years to bring this proceeding and has made no representation as to the reason for the delay. Moreover his claim is based on a brief reference to a collateral crime in his trial, which occurred seventeen years ago. This claim could and should have been raised many years ago. The unwarranted filings of such delayed claims unnecessarily clog the court dockets and represent an abuse of the judicial process.

To remedy this abuse, we conclude, **as a matter of law, that any petition for a writ of habeas corpus claiming ineffective assistance of appellate counsel is presumed to be the result of an unreasonable delay and to prejudice the state if the petition has been filed more than five years from the date the petitioner's conviction became final.** We further conclude that this initial presumption may be overcome only if the petitioner alleges under oath, with a specific factual basis, that

the petitioner was affirmatively misled about the results of the appeal by counsel.

Accordingly, we find this petition is barred by laches and we deny the petition.

McCray, 699 So.2d at 1368 (emphasis added); See also *Gusow v. State*, 6 So.3d 699, 705 (Fla. 4th DCA 2009) ("A motion filed outside the time limit is barred by laches as a matter of law unless one of the exceptions [set out in Rule 3.850(b)] is met."); *Hough v. State*, 773 So.2d 90 (Fla. 5th DCA 2000); but see *Patterson v. State*, 736 So.2d 1270 (Fla. 4th DCA 1999) (*McCray* does not apply to petitions for belated appeals because a petitioner could never allege under oath how he was affirmatively misled about the results of an appeal which was never filed).

The doctrine of laches is also applicable to a claim for declaratory relief. See *City of St. Petersburg v. Norris*, 335 So.2d 333 (Fla. 1st DCA 1976) (Appellees did not assert claim for declaratory judgment for overtime pay until six years after the first contested pay period, failed to point to any equitable considerations to justify that delay, and prejudice resulting from the delay would result to the appellant. Therefore, the action was barred by laches.)

Claim I does not merit the declaratory relief requested because a Chapter 86 Florida Statutes, is a civil remedy, inappropriate for consideration in a criminal case, and because Defendant has not joined, and cannot join a necessary party in interest, FDLE.

Florida Statutes Section 86.091 which is included under Title

VI **Civil** Practice and Procedure (emphasis added) provides:

86.091 Parties.— When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. **No declaration shall prejudice the rights of persons not parties to the proceedings.** In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

(emphasis added). Defendant is asking for a declaratory judgment that will certainly affect the rights of the primary state agency entrusted with carrying out the provisions of Section 943.0435 Florida Statutes. A hint about who that party may be is the fact that Chapter 943 of the Florida Statutes is entitled "Department of Law Enforcement". Moreover, Section 943.0436(2)&(3), Florida Statutes, specifically provide:

(2) If a person . . . meets the criteria in s. 943.0435, . . . for classification as a sexual offender, the court may not enter an order, . . . for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred

authority as such duty or authority relates to sexual predators or sexual offenders.

(3) If the court enters an order that affects an agency's performance of a duty imposed under the laws governing sexual predators or sexual offenders, or that limits the agency's exercise of authority conferred under such laws, the Legislature strongly encourages the affected agency to file a motion in the court that entered such order. The affected agency may, within 1 year after the receipt of any such order, move to modify or set aside the order or, if such order is in the nature of an injunction, move to dissolve the injunction. Grounds for granting any such motion include, but need not be limited to:

(a) The affected agency was not properly noticed.

(b) The court is not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is illegally applied or unless the statute or the challenged part of it is unconstitutional on adjudicated grounds.

(c) Jurisdiction may not be conferred by consent of the parties.

(d) To the extent that the order is based upon actions the agency might take, the court's order is premature and, if and when such actions are taken, these actions may be challenged in appropriate proceedings to determine their enforceability.

(e) The injunction affects the public interest and would cause injury to the public.

(f) The order creates an unenforceable, perpetual injunction.

(g) The order seeks to restrict the agency in the performance of its duties outside the court's territorial jurisdiction.

(emphasis added). It is clear that the Florida Legislature intended that the "affected agency", which is, in this instance, FDLE, be included in any litigation leading up to an order of the

sort Defendant seeks in Claim I. Claim I should therefore be denied, without prejudice to bring some sort of Chapter 86 or other civil action in a properly filed civil case, because Claim I is inappropriate in the instant closed criminal case.

Claim I should likewise be denied because the structure of the instant criminal case does not provide for joinder of FDLE, a party essential to the action.

Claim I does not substantively merit relief sought

Even if it were proper to address Claim I within the instant criminal case, and if it were proper to join, FDLE, the proper party for the relief sought, as a party in this criminal case, Defendant would still not be entitled to relief on the argument he makes here. Defendant's argues that he was never "convicted" of the requisite offense to trigger the operation of Section 943.0435 because adjudication was withheld. This argument has been considered and rejected. See *Price v. State*, 43 So.3d 854 (Fla. 5th DCA 2010) (trial court did not err in rejecting Defendant's contention that because adjudication was withheld on his prior offenses after he entered a plea of nolo contendere, he was not convicted and, therefore, is not a sexual offender who is required to register under section 943.0435, Florida Statutes).

For all of the above reasons Claim I should be denied.

II EX POST FACTO

**APPLICATION OF SECTION 943.0435 OF THE 1998 FLORIDA
STATUTES TO THE DEFENDANT VIOLATES THE EX POST FACTO**

CLAUSE

In Claim II Defendant seeks declaratory relief, to wit: "that this Court enter a judgment declaring the Defendant's permanent placement on the sex offender registry is invalid." Instant Motion, 12, last paragraph)

The State asserts that FRCP 3.850 and 3.800 are inapplicable to this claim for the same reasons argued above with respect to Claim I.

The State asserts that Claim II should be denied under the doctrine of laches for the same reasons argued above with respect to Claim I.

The State also asserts that Claim II should be denied because the instant case is an inappropriate forum for the application of a Chapter 86 declaratory judgment, and because Defendant has not, and cannot in this criminal case, join a necessary party to the relief he seeks. The State asserts this for the same reasons as argued in response to Claim I.

Claim II is also lacks substantive merit. The application of Section 943.035, Florida Statutes to a criminal case disposition that took place prior to the enactment of that Section does not violate the ex post facto constitutional prohibitions.

In *Simmons v. State* 753 So.2d 762,763 (Fla.4th DCA,2000) the court considered the validity of applying § 943.0435, Florida Statutes to a criminal who had, before enactment of that section,

pleaded to criminal charges that later triggered application of the law:

The Defendant argues that application to him of section 943.0435 violates the ex post facto clause and that he would have never entered a guilty plea had he known that his picture would be posted on the Internet. "In evaluating whether a law violates the ex post facto clause, a two-prong test must be applied: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable." *Arnold v. State*, 755 So.2d 696, 699 (Fla. 4th DCA 1999). The first prong has clearly been met. However, the second prong has not been met because the statute does not alter the definition of criminal conduct and does not constitute punishment. We have stated that section 943.0435 is a regulatory statute. See *Quinn v. State*, 751 So.2d 627 (Fla. 4th DCA 1999). Regulatory statutes do not constitute punishment. See generally *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997), rev. denied, 707 So.2d 1124 (Fla.1998). In addition, the reporting requirements as well as the notification requirements of the Sexual Predator Act, which require law enforcement agencies to post information about sexual predators on the Internet, are regulatory and procedural in nature and do not violate the ex post facto clause. See *Rickman v. State*, 714 So.2d 538, 539 (Fla. 5th DCA 1998). Because the Sexual Predator Act, section 775.21 of the Florida Statutes, is similar to the sexual offender statutes at issue in the present case, we conclude based on *Rickman* that no ex post facto violation occurred because the second prong of the test has not been met.

As the *Simmons* court pointed out, § 943.0435, Florida Statutes, is regulatory in nature, therefore, even though that statute has now been expanded to add additional "triggering" dispositions in criminal cases, so that Defendant's disposition is now included, that fact does not violate the ex post facto clause any more than did the original statute. *Simmons, id*, addressed a situation where a person who was not within the reach of a regulatory

statute at the time his case was disposed of, was later brought into that reach by the enactment of a new regulatory statute. See also *Westerheide v. State*, 831 So.2d 93, 102-04 (Fla.2002) (holding that the Jimmy Ryce Act is not punitive in nature and does not violate ex post facto clause); *Gonzalez v. State*, 808 So.2d 1265 (Fla. 3d DCA 2002) (holding that the reporting requirements as well as the notification requirements of Florida's Sexual Predator Act are regulatory and procedural in nature and do not violate the ex post facto clause); *Rickman v. State*, 714 So.2d 538 (Fla. 5th DCA 1998) (holding that registration requirement of Florida's Sexual Predator Act is procedural and regulatory in nature and does not constitute punishment in violation of ex post facto clause) cf *Cella v. State*, 831 So.2d 716 (Fla. 5th DCA 2002) (Registration under section 775.13 is not a direct consequence of the plea. Rather, it is a collateral consequence . . . a defendant may not set aside a plea on the basis that he or she was not advised of a collateral consequence).

For all of the above reasons, Claim II should be denied.

III DECLARATORY JUDGMENT

**THE DEFENDANT'S DUE PROCESS RIGHTS ARE BEING VIOLATED
BECAUSE HE IS NOT REQUIRED TO REGISTER AS A SEX OFFENDER
PURSUANT TO SECTION 943.0435 OF THE 1998 FLORIDA STATUES**

In Claim III Defendant seeks declaratory relief, to wit: that "this Court enter a judgment declaring the permanent placement of the defendant on the sex offender registry to be declared invalid

due to lack of notice and failure to give the Defendant an opportunity to be heard and defend . . .") Instant Motion, 14, last paragraph).

The State asserts that FRCP 3.850 and 3.800 are inapplicable to this claim for the same reasons argued above with respect to Claim I.

The State asserts that Claim III should be denied pursuant to the doctrine of laches for the same reasons as stated above with respect to Claim I.

The State also asserts that Claim III should be denied because the instant case is an inappropriate forum for the application of a Chapter 86 declaratory judgment, and because Defendant has not, and cannot in this criminal case, join FDLE, a necessary party to the relief he seeks. The State asserts this for the same reasons as argued in response to Claim I.

Claim III also lacks substantive legal merit. The application of Section 943.035, Florida Statutes to a criminal case disposition that took place prior to the enactment of that Section does not violate Due Process constitutional prohibitions. See *Hanson v. State*, 905 So.2d 1036 (Fla. 5th DCA 2005) ("In rejecting Appellant's claim, we adopt the analysis of the court in *Doe v. Moore*, 410 F.3d 1337 (11th Cir.2005), which rejected a similar attack on Florida's statutory scheme requiring registration and public notification of persons designated as sexual offenders. § 943.0435, Fla. Stat.

(2004)"); *Springer v. State*, 874 So.2d 719 (Fla. 5th DCA 2004) (designation as a sexual predator did not violate due process rights); *Rickman v. State*, 871 So.2d 310 (Fla. 5th DCA 2004).

For all of the reasons stated above, Claim III should be denied.

IV INJUNCTIVE RELIEF

THE FDLE SHOULD BE ENJOINED FROM ENFORCING THE SEX OFFENDER REGISTRATION REQUIREMENTS AGAINST THE DEFENDANT AS SUCH REQUIREMENTS ARE AN IMPROPER RETROACTIVE SENTENCE ENHANCEMENT

In Claim IV Defendant seeks an order "*NUNC PRO TUNC*, in order to correct the erroneous and illegal sentence enhancement that has resulted." Defendant also seeks "an Order enjoining the FDLE from enforcing § 943.0436, Florida Statutes (1998) against the Defendant, as the term "conviction" did not apply to the Defendant." (Instant Motion, 15)

The state asserts that Claim IV should be denied pursuant to the doctrine of laches for the same reasons stated with respect to Claim I.

The State also asserts that Claim IV should be denied because the instant case is an inappropriate forum for the application of civil injunctive relief, and because Defendant has not, and cannot in this criminal case, join FDLE, a necessary party to the relief he seeks. The State asserts this for the same reasons as argued in response to Claim I.

Even if it were proper to address Claim IV within the instant criminal case, and if it were proper to include, FDLE, the proper party for the relief sought, Defendant would still not be entitled to relief on the argument he makes on Claim IV.

In his request for a Nunc pro tunc order, Defendant does not point to any scriveners' error, or illegality that needs to be corrected in the order. The order was correct and legal at the time it was entered, and it is correct and legal now. The registration requirements imposed by § 943.0436, Florida Statutes (1998) cannot be a "sentence enhancement" as Defendant claims because these requirements are not part of the sentence. In *State v. Partlow*, 840 So.2d 1040 (Fla. 2003) the court explained the proper relationship of sex offender registration requirements to the underlying sentence:

We agree with the district courts that the sexual offender registration requirement is a collateral consequence of the plea. A direct consequence must affect the range of punishment in a definite, immediate, and largely automatic way. **The registration requirement has absolutely no effect on the "range of the defendant's punishment"** for the crime to which Partlow entered a plea. Because **the requirement to register is not punishment at all, and therefore cannot affect the range of the defendant's punishment, it is merely a collateral consequence of the plea.** See § 943.0435(12), Fla. Stat. (2002) (stating that sexual offender designation "is not a sentence or a punishment but is simply the status of the offender"). Although a defendant's later failure to register as a sexual offender constitutes a third degree felony, see § 943.0435(9), Fla. Stat., such consequences flow from a violation of that statute, not the one for which he entered a plea. The fact remains that the defendant

faces no further punishment for this crime simply because the law imposes other duties as a result.

Partlow, at 1043 (footnote omitted, emphasis added). The registration requirements that Defendant became subject to when § 943.0435 was enacted in 1998 were not part of the sentence. They therefore cannot be sentence enhancements either. There simply is no basis for the relief that Defendant requests.

The retroactive nature of the requirement that Defendant register under Sec. 943.0435 is not a valid basis for granting him legal relief. See *Givens v. State*, 851 So.2d 813 (Fla. 2nd DCA 2003) (Court held in *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), that the Alaska Sex Offender Registration Act is nonpunitive and that, therefore, its retroactive application does not violate the Ex Post Facto Clause). Likewise, in *Fletcher v. State*, 699 So.2d 346, 347 (Fla. 5th DCA 1997), the court held that the sexual predator designation is not an impermissible modification of an offender's sentence "because the designation 'sexual predator' is neither a sentence nor a punishment." See also *Collie v. State*, 710 So.2d 1000, 1006 (Fla. 2d DCA 1998).

For all of the above reasons Defendant's Claim IV should be denied.

V DECLARATORY RELIEF

APPLICATION OF SECTION 943.0435, FLORIDA STATUTES (1998) TO THE DEFENDANT VIOLATES THE EIGHTH AMENDMENT

3.850 and 3.800 have no application to Claim V for the same reasons stated above with respect to Claim I.

Defendant is also time barred from any claim under FRCP 3.850 for the reasons stated above with respect to Claim I.

The state asserts that Claim V should also be denied pursuant to the doctrine of laches for the same reasons stated above with respect to Claim I.

Claim V should also be denied because the declaratory relief requested under Chapter 86 Florida Statutes, is a civil remedy inappropriate for consideration in a criminal case, and because Defendant has not joined, and cannot join a necessary party in interest, FDLE. This is so for the reasons stated above with respect to Claim I.

Even if it were proper to address Claim I within the instant criminal case, and if it were proper to join, FDLE, the proper party for the relief sought, and even if Claim V were not time barred, and barred by the doctrine of laches, Defendant would still not be entitled to relief on the argument he makes here. This is so for the following reasons.

The imposition a the requirement that a Defendant register as a sex offender based upon his existing history of criminal case dispositions does not violate the constitutional prohibition of ex post facto laws. See *Simmons v. State*, 753 So.2d 762, (Fla.4th DCA,2000) (application to him of section 943.0435 did not violate

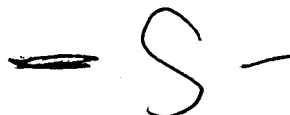
the ex post facto clause because the statute is regulatory, does not alter the definition of criminal conduct, and does not constitute punishment). As the *Simmons* court pointed out, § 943.0435, Florida Statutes, is regulatory in nature, therefore, even though that statute has now been expanded to add additional "triggering" dispositions in criminal cases, so that Defendant's disposition is included, that fact does not violate the ex post facto clause any more than did the original statute. Just as was the case in *Simmons, id*, a person who was not within the reach of a regulatory statute at the time his case was disposed of, has now been brought into that reach by the enactment of a new regulatory statute. See also *Westerheide v. State*, 831 So.2d 93, 102-04 (Fla.2002) (holding that the Jimmy Ryce Act is not punitive in nature and does not violate ex post facto clause); *Gonzalez v. State*, 808 So.2d 1265 (Fla. 3d DCA 2002) (holding that the reporting requirements as well as the notification requirements of Florida's Sexual Predator Act are regulatory and procedural in nature and do not violate the ex post facto clause); *Rickman v. State*, 714 So.2d 538 (Fla. 5th DCA 1998) (holding that registration requirement of Florida's Sexual Predator Act is procedural and regulatory in nature and does not constitute punishment in violation of ex post facto clause). Cf *Cella v. State*, 831 So.2d 716 (Fla. 5th DCA 2002) (Registration under section 775.13 is not a direct consequence of the plea. Rather, it is a collateral

consequence . . . a defendant may not set aside a plea on the basis that he or she was not advised of a collateral consequence).

For all of the foregoing reasons, Claim V should be denied.

WHEREFORE, for the foregoing reasons, the state asks the court to deny defendant's motion for postconviction relief in full.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail to Robert L. Sirianni, Jr., Esq., and Paetra T. Brownlee, Esq, Counsel for Defendant at Brownstone, P.A. 400 North New York Avenue, Suite 215, Winter Park, FL 32789 on this 31st day of January, 2012.



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EXHIBIT G



VIA U.S. MAIL

March 13, 2013

Honorable Janet C. Thorpe
9TH JUDICIAL CIRCUIT – ORANGE CO.
425 North Orange Avenue, Suite 1110
Orlando, Florida 32801

RE: State v. Patrick Clark
Case No. 1995-CF-0010355

Dear Judge Thorpe:

Enclosed please find a courtesy copy of Defendant's Amended Motion for Post-Conviction Relief, as filed in this Court on November 3, 2010. With the hope of expediting a ruling from this Honorable Court, I have also enclosed the State's Response, as filed on January 31, 2012.

On behalf of Defendant Patrick Clark, our firm respectfully requests this Court review the enclosed, and enter a ruling. Please let me know if any further information is necessary to resolve this matter.

Thank you, in advance, for your time and consideration.

Sincerely,

BROWNSTONE, P.A.

A handwritten signature in black ink that reads "Janelle Hartzog". The signature is written in a cursive, flowing style.

Janelle Hartzog
Paralegal

Enc.
cc: Patrick J. Clark; Office of the State Attorney

PRIDE, PASSION, AND THE PURSUIT OF WINNING THE ARGUMENT ON APPEAL