SEXUAL PREDATOR AND OFFENDER DESIGNATIONS

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SEXUAL PREDATOR AND OFFENDER DESIGNATIONS

NOTE: When reviewing cases in this outline you should focus as much as possible on recent decisions. Many of the early opinions are no longer valid under current law because the statute has been frequently amended to address such legal issues and the case law has refined over time.

ABILITY TO PAY FEES

Eveland v. State**,** 2014 WL 2958294 (Fla.App. 2 Dist.)

> Remand was required to allow the trial court to consider whether sex offender had the ability to pay the administrative fee associated with renewing his driver's license or identification card during the 48 hour period after he reported his change of address to the sheriff's office, in prosecution for failure of a sex offender to report.
>
> Discussion: Defendant was homeless and registered a change of address with the Sheriff. Within 48 hours he went to DHSMV to update his driver's license, but they would not give him one because he did not have the $35 fee. Instead they gave him a paper explaining this. He was charged with failure to register and filed a motion to dismiss. The trail court denied the motion, stating the defendant was able to work as a day laborer and was not making a good faith effort to earn money. The appellate court said that any work or money earned after the 48 hour period should not be considered. The court should have only considered his financial status during the 48 hour period when he was supposed to register.

Tyler v. State, 2011 WL 3300165 (Fla.App. 2 Dist.):

> Proving that defendant could not afford an attorney fell far short of proving that he could not afford to update his driver's license for purposes of statute requiring defendant to register as a sexual offender by obtaining updated driver's license after changing his residence.
>
> In the absence of evidence demonstrating its application to defendant's particular circumstances, statute, requiring defendant to register as a sexual offender by obtaining updated driver's license after changing his residence, was facially valid; there was no showing that defendant had made an effort to update his license, but was unable to do so because he could not pay the associated fee despite his reasonable efforts.

Sexual offenders are legally compelled by statute to obtain driver's license or identification card every time they change their residences, and they are expressly required to pay for it.

ATTEMPTED PREDICATE OFFENSES

Marriaga v. State, 35 Fla. L. Weekly D1883 (Fla. 3d DCA 2010)

Defendant's conviction for attempted sexual battery, a first-degree felony, qualified him as a sexual predator under the Sexual Predators Act; although prior version of Act did not recognize attempt offenses as qualifying offenses, it was amended, before defendant's sentencing, as to recognize attempts to commit first-degree felonies as qualifying offenses.

State v. Colley, 744 So.2d 1172 (Fla. 2d DCA 1999):

Defendant who entered nolo contendere plea to Attempted Sexual Battery While Armed with Dangerous Weapon, a first degree felony, met criteria for sexual predator designation.

Neither fact that offense was an attempt or fact the offense was first degree felony only because it was reclassified under section 775.04 based on the use of a dangerous weapon prevents designation of sexual predator.

State v. Townsend, 728 So.2d 289 (Fla. 2d DCA 1999):

An attempt can be a qualifying offense for sexual predator designation.

Johnson v. State, 716 So.2d 332 (Fla. 2d DCA 1998):

Defendant who entered guilty plea to attempted sexual battery on child under twelve years of age, a first-degree felony, was properly classified as a sexual predator. No merit to defense claim that sexual predator designation was inapplicable because it was not a completed crime.

CONSPIRACY TO COMMIT UNDERLYING OFFENSE

Best v. State, 2022 WL 3691339, (Fla.App. 5 Dist., 2022) (concurrence)

This case was affirmed without an opinion. The concurring judge, however, felt compelled to discuss a legitimate objection that was not preserved by defense counsel. The defendant was convicted of conspiracy to commit sexual battery on a child, a first degree felony. The concurring

judge argued that this would not qualify the defendant as a sexual predator because conspiracy is a separate offense from the object of the conspiracy. Furthermore, the sexual predator statute says it applies to a defendant "convicted of a violation of section 794.011, or any attempt thereof." Conspiracy is not listed in the statute.

COURT HAS NO DISCRETION

Miller v. State, 38 Fla. L. Weekly D1029 (Fla. 1st DCA 2013):

Trial court was required to designate defendant as a sexual predator pursuant to the Sexual Predator Act, where he met the sexual predator criteria by pleading guilty to sexual battery on a helpless victim.

"Section 775.24(2), Florida Statutes (2010), also makes clear that a court may not enter an order approving a plea agreement that exempts a person who meets the criteria for designation as a sexual predator."

Hughes v. State, 967 So.2d 968 (4th DCA 2007):

"Petitioner seeks mandamus relief to require the trial judge to remove the designation of petitioner as a sexual offender as the judge originally ordered at sentencing. Since petitioner was convicted of an offense for which sexual offender designation is mandatory, the trial court had no authority to exempt a qualifying person from such designation. § 775.24, Fla. Stat. (2003). Mandamus relief is available only to require performance of legally authorized acts and thus cannot be invoked in this case."

Reyes v. State, 28 Fla. L. Weekly D2131 (Fla. 4th DCA 2003):

Designating individual as sexual offender without evidentiary hearing does not violate procedural due process rights.

Registration requirements of Act do not violate substantive due process rights.

Act does not facially violate separation of powers principles by making sexual predator designation mandatory for all defendants who meet statutory criteria.

State v. Curtin, 764 So.2d 645 (Fla. 1st DCA 2000):

Trial court departed from the essential requirements of law when it denied state's motion to declare defendant a sexual predator, where defendant met statutory criteria for such designation.

Where defendant was convicted of sexual battery on physically helpless victim, first degree felony, violation of Chapter 794, an offense was committed on or after October 1, 1996, trial court was required to make finding sexual predator status.

Kelly v. State, 26 Fla. L. Weekly D2005 (Fla. 5th DCA 2001):

Florida Sexual Predators Act is mandatory and affords no discretion to trial court to designate an individual a sexual predator if statutory criteria are met. Mandatory application of the Act by the courts does not offend the separation of powers provisions of Florida Constitution.

DEFECTIVE INFORMATIONS

Richards v. State, 2018 WL 560701 (Fla.App. 2 Dist., 2018)

The State charged defendant with failing to register as a sexual predator in that he "did fail to provide required location information, or did otherwise fail, by act or omission, to comply with the requirements of Florida Statute 775.21; contrary to Chapter 775.21(10)(a)."

In reversing the conviction, the court stated the information in this case did not allege the essential elements of the charged offense and it did not cite a specific subsection of the statute that included the missing elements or otherwise place the defendant on notice of the nature of his alleged criminal conduct.

Citing of the general statute is not sufficient where it does not put the defendant on notice of the elements that constitute the charged conduct.

The statute cited in the information was the sentencing subsection. The state went forward on subsection 6(g), which was not specifically cited.

Moore v. State, 33 Fla. L. Weekly D2347 (Fla. 5th DCA 2008):

This case discusses whether the specific language in the Failure to Register information was sufficient and whether the jury instruction was proper.

> "Even if an information fails to allege the essential elements of a crime, it is sufficient if it references specific sections of the criminal code detailing tall the elements of the offense…Consequently, the State's citation to section 943.0435 was sufficient to allow it to prove Moore was a sexual offender under any of the three theories provided in that statute."

McMann v. State, 32 Fla. L. Weekly D1027 (Fla. 1st DCA 2007):

> Charging document's citation to wrong reporting statute did not mislead sex offender to his prejudice as to warrant dismissal of charge of failing to report every six months to county sheriff's office; cited statute and intended statute had same reporting requirements and contained identical language, and State included language of correct statute in charging documents.
>
> Discussion: Since the defendant was on probation, he should have been charged under F.S. 944.607, but the State charged him under F.S. 943.0435, which was technically incorrect. The court let it slide this time, but be careful when making this charging distinction.

Millan v. State, 32 Fla. L. Weekly D965 (Fla. 5th DCA 2007):

> "The State filed an information charging Appellant with failure of a sexual offender to report a change in residence pursuant to subsections 943.0435(4) and 943.0435(9), Florida Statutes (2004). It is undisputed, however, that, although Appellant is a sexual offender, he is also a sexual predator. Because section 943.0435, by its express terms, "does not apply to a sexual offender who is also a sexual predator," Appellant cannot be convicted of the crime with which he was charged, and the trial court erred when it denied Appellant's motion for judgment of acquittal."

State v. Erickson, 28 Fla. L. Weekly D1562 (Fla. 5th DCA 2003):

> Abuse of discretion to deny motion to amend information where state originally charged defendant with failure to register as a sexual offender as required by section 943.0435, and after receiving copies of documents pertaining to defendant's criminal history in other states, state sought to amend information pretrial to charge defendant with failure to register as sexual predator, as required by same statue.
>
> Defendant could not have been prejudiced by proposed amendment because he would have been required to abide by registration requirements of 943.0435 whether he qualified as sexual offender as originally charged or as sexual predator under 775.21.

Discussion: These issues were addressed at a c(4) motion to dismiss. The court gives us some good language regarding the fact that an information can be amended even in the middle of trial if there is no prejudice. The most intriguing part of this opinion, however, is the footnote 1 where the court explains that recent case law regarding the qualifying dates in the statutes. Specifically, the court notes, "Since the courts of Florida have uniformly recognized that the Florida Sexual Predators Act is regulatory in nature and does not constitute punishment subject to constitutional ex post facto challenges, the need for a qualifying offense date with the Act is questionable." The court then requests the legislature to reconsider whether the qualifying dates of October 1, 1993 and October 1, 1997 still need to be in the statute. The court believes that the inclusion of these dates in the statue may preclude some individuals who should be declared sexual predators from having to do so.

DEFENDANT CHALLENGING HIS PLEA

Stewart v. State, 2021 WL 1657587, (Fla.App. 4 Dist., 2021)

Defendant pled guilty to a sex offense and sentencing was sent for a future date. Prior to sentencing, the defendant filed a motion to withdraw his plea. He said his attorney never explained sexual offender probation and sexual predator registration to him. *As the failure to inform of a collateral consequence meets the requirement of good cause for a withdrawal of a pre-sentence plea, the trial court abused its discretion in denying the motion.*

Frandi v. State, 2018 WL 1886514, at *1 (Fla.App. 1 Dist., 2018)

First, the record shows that Appellant specifically agreed to the sexual predator designation as part of the negotiated plea agreement. Because this designation is not a sentence or a punishment, Appellant was not precluded from agreeing to the designation even if he did not qualify under the statute. See Kingry v. State, 28 So.3d 173, 174 (Fla. 1st DCA 2010). And, because Appellant has received the benefits of the plea agreement,[2] he cannot now seek to be relieved of one of the burdens imposed on him by the agreement.

An adjudication of delinquency can be used to satisfy the prior conviction element of the sexual predator statute.

Peng v. State, 2016 WL 6393779 (Fla. 5th DCA Oct. 28, 2016)

Defendant, seeking postconviction relief after being designated a sexual offender following no contest plea, was entitled to evidentiary hearing on

his claims that trial counsel affirmatively misadvised him that designation as a sexual offender, rather than as a sexual predator, would preclude his photograph from being posted on the Florida Department of Law Enforcement's website, and that but for this misadvice, he would have proceeded to trial.

Although counsel is generally not required to advise a defendant of the collateral consequences of a plea, affirmative misadvice regarding collateral consequences may provide a basis for postconviction relief.

Sadler v. State, 2014 WL 3397955 (Fla.App. 1 Dist.)

Order striking defendant's underlying sexual predator designation was newly discovered evidence that could not have been discovered earlier through the exercise of diligence, as necessary to enable defendant to seek postconviction relief more than two years after his conviction for failure to register as a sexual predator became final.

Withdrawal of defendant's nolo contendere plea to failure to register as a sexual predator was necessary to correct a manifest injustice after underlying sexual predator designation was stricken, as necessary to enable defendant to seek postconviction relief more than two years after his conviction for failure to register became final; conviction was based on the premise that defendant met the criteria for the designation and failed to comply with the registration requirements imposed because of that designation, and without the designation defendant could not have been convicted of the offense.

Moseley v. State, --- So.3d ----, 2014 WL 54673 (Fla.App. 2 Dist.)

Although a sexual predator designation is a collateral consequence of conviction of which the trial court is not required to advise a defendant during a plea colloquy, an allegation of affirmative misadvice by counsel with respect thereto nevertheless provides grounds for withdrawing an involuntary plea.

Post-conviction movant was entitled to hearing on his claim that his plea of guilty to attempted sexual battery on a person less than 12 years of age was rendered involuntary by his counsel's misadvice with respect to his designation as sexual predator, where movant alleged that had he been properly advised, he would have gone to trial and sought acquittal on original charges to avoid sexual predator designation, and record did not conclusively refute claim of misadvice.

Bach v. State, 32 Fla. L. Weekly D662 (Fla. 4th DCA 2007):

> Defendant's postconviction claim of affirmative misadvice could not be raised for the first time in motion for rehearing of the denial of his motion for postconviction relief, which alleged that his designation as a sexual predator after being sentenced for violation of probation breached his plea agreement.
>
> Defendant's designation as a sexual predator several years after he was sentenced for violation of his probation did not breach defendant's original plea agreement, which provided for designation as a sexual offender; violation of probation allowed trial court to impose any sentence it could have lawfully imposed before placing him on probation, and law at time of defendant's crimes required his designation as a sexual predator based on his qualifying convictions.

Delarosa v. State, 30 Fla. L. Weekly D2400 (Fla. 3rd DCA 2005):

> Defendant's guilty plea to unlawful sex with a minor was not rendered involuntary due to lack of advisement on application of sexual offender or sexual predator laws; designation as sexual offender or sexual predator was collateral, not direct, consequence of guilty plea about which defendant did not have to be advised.
>
> Defendant's guilty plea to unlawful sex with a minor was not rendered involuntary due to lack of warning that Department of Corrections' rules on visitation might preclude him from visiting with his minor son; rules on visitation had no effect on range of defendant's punishment and, thus, did not constitute direct consequence of guilty plea.

Moore v. State, 30 Fla. L. Weekly D2133 (Fla. 4th DCA 2005):

> Defendant's motion contesting his post-conviction adjudication and sentence for failure to register as a sexual predator on grounds of involuntary plea, filed pursuant to rule applying to motions to withdraw pleas filed within thirty days after rendition of sentencing, was untimely, as it was filed almost three years after his sentencing, and therefore, summary denial of motion was warranted, without prejudice to file amended, verified motion for post-conviction relief.

Gunn v. State, 28 Fla. L. Weekly D878 (Fla. 2d DCA 2003):

Evidentiary hearing required on motion to withdraw guilty plea in which defendant alleged that counsel misadvised him that he would not be registered as a sexual offender if he entered plea.

Affirmative misadvice about a collateral consequence of a plea provides a basis on which to withdraw a plea.

Because withdrawing his plea, defendant is entitled to appointment of conflict free counsel for purpose of evidentiary hearing on motion to withdraw plea.

State v. Partlow, 28 Fla. L. Weekly S148 (Fla. 2003):

After being sentenced for sexual offense pursuant to guilty or nolo contendere plea, defendant is not entitled to withdraw plea as involuntary because he was not informed of sexual offender registration requirement.

Sexual offender registration requirement is a collateral consequence of the plea, and therefore failure to inform defendant of the requirement before he entered the plea does not render his plea involuntary.

Nelson v. State, 26 Fla. L. Weekly D796 (Fla. 1st DCA 2001):

Defendant not entitled to withdrawal of plea on ground that he was not informed that upon conviction he would be designated as a sexual predator or sexual offender.

Reporting requirements in case of sexual predators or sexual offenders are collateral consequences that are not compelled to be disclosed to defendant before acceptance of plea.

Defendant waived any objection to condition of probation prohibiting him from living or having unsupervised contact with minors within 1000 feet of places where children congregate, where defendant agreed to condition in plea agreement.

Graham v. State, 26 Fla. L. Weekly D617 (Fla. 2d DCA 2001):

Abuse of discretion for trial court to fail to allow defendant to withdraw plea that was based on defense counsel's mistaken advice that defendant's photo would not be placed on Internet.

Defendant is entitled as matter of right to withdraw plea at any time prior to sentencing on showing of good cause.

While counsel is not required to warn a defendant about collateral consequences of a plea, if collateral matters are discussed and counsel's advice is "measurable deficient," then a plea based on that advice could be involuntary.

Donovan v. State, 26 Fla. L. Weekly D173 (Fla. 5th DCA 2001):

No error in denying relief on claim that plea would not have been entered if defendant had known that he would be required to report to FDLE as convicted sex offender.

Sexual offender reporting requirement is collateral consequence of plea.

Sexual offender statute is regulatory in nature and does not violate ex post facto clause.

Discussion: This is another appellate attempt to close the Pandora's Box opened by the 4th DCA in the Wiita opinion. This case specifically distinguished the facts from those in Wiita to justify its conclusion.

Coblentz v. State, 775 So.2d 359 (Fla. 2d DCA 2000):

Where defendant entered into voluntary nolo contendere plea in criminal case, and his sentence was lawful, defendant has no basis for appeal in his criminal case from order declaring defendant to be a sexual predator.

Defendant should seek civil remedy for his claim that he does not qualify as sexual predator.

State v.Stapleton, 764 So.2d 886 (Fla. 4th DCA 2000):

No error in granting motion to withdraw plea to offense of lewd assault, in which defendant alleged he was not informed that as a convicted sex offender, he would have to report to the Florida Department of Law Enforcement, that he was not advised of "Jimmy Ryce Act," which went into effect three days before plea was entered and that he would not have entered plea had he known of reporting requirements or Jimmy Ryce Act with its potential exposure to indefinite commitment for treatment following his prison sentence.

Oce v. State, 742 So.2d 464 (Fla. 3rd DCA 1999):

Trial court properly found that defendant was not entitled to have his plea set aside on the ground that counsel and court failed to inform him of the registration and community and public notification requirements of his designation as a sexual predator.

Error in not complying with statutory notification requirements when designating defendant as sexual predator should have been brought to trial court's attention by objection in order to preserve issue for appellate review.

Discussion: It is important to note a footnote to this case which distinguishes this case from another important appellate opinion:

FN2. State v. Wiita, No. 98-2248 (Fla. 4th DCA June 30, 1999), brought to our attention by the State, in no way conflicts with our analysis. The statute at issue in Wiita was retroactive in nature and was enacted subsequent to the defendant's plea agreement. The Fourth District held that under the particular facts in Wiita resulting in his plea agreement, such as the defendant's express wishes to avoid publicity for himself and his family, application of the retroactive statute was manifestly unjust.

State v. Wiita, 744 So.2d 1232 (Fla. 4th DCA 1999):

Where defendant had entered guilty plea to lewd assault and sexual activity with a child pursuant to plea agreement because of desire to avoid stress and publicity of jury trial, and defendant's name and photograph were posted on Internet as sexual offender under provisions of statute which was enacted six years later, trial court did not abuse discretion in finding that plea was not freely and voluntarily entered, and an entering order granting defendant's motion to vacate sentence. Manifest injustice occurred because defendant gave up right to jury trial to avoid publicity an stress, yet was subjected to publicity and stress he wanted to avoid by statute enacted six years after plea agreement was entered into.

Discussion: The appellate court noted that the prosecutor who argued for the state on the motion to vacate sentence did not introduce the plea colloquy transcript from the original plea to the crime. The implication here is that if the original plea colloquy established an adequate record, the case may have had a different result.

LaMonica v. State, 732 So.2d 1175 (Fla. 4th DCA 1999):

Defendant was entitled to evidentiary hearing on claim raised in his motion for postconviction relief, alleging that his no contest plea to lewd assault

charge was involuntary; defendant's motion related a statement by defense counsel that could be construed as affirmative misinformation about consequences of plea.

Reporting requirements of the Sexual Offender Act were a collateral consequence which did not have to be disclosed before defendant's no contest plea to lewd assault charge was accepted.

DOUBLE JEOPARDY

Alvarez v. State, 2022 WL 3221464 (Fla.App. 3 Dist., 2022)

Defendant was convicted of sexual battery on a child and lewd conduct and sentenced to life in prison. After sentencing, the court amended the sentence to include sexual predator designation. The defendant argued that the amended sentence violated his due process and double jeopardy rights. The defendant also argued the court did not have jurisdiction to amend the sentence during the pendency of his appeal.

The appellate court affirmed and cited numerous cases that say a sexual predator designation is neither a sentence nor a punishment and is regulatory and procedural in nature.

Andrews v. State, 2011 WL 3558148 (Fla.App. 1 Dist.):

State provided sufficient evidence to prove registered sexual offender was using his girlfriend's apartment as a temporary address: witnesses testified that his vehicles was parked there regularly and the defendant told them he lived there.

Convictions on two counts of failure to register based upon failing to register at two three-month intervals did not violate double jeopardy.

Two consecutive ten-year sentences did not constitute cruel and unusual punishment.

Bostic v. State, 60 So.3d 535, 536 (Fla.App. 1 Dist.,2011)

Appellant was obligated to report upon release from incarceration under section 943.0435(2) and on the month of his birth and every six months thereafter under section 943.0435(14). Even if failure to report is considered a continuing offense, see Lieble v. State, 933

So.2d 119 (Fla. 5th DCA 2006), each failure to report constituted a new violation of the applicable reporting statute and a separate offense, not part of "one criminal episode or transaction."

Sheppard v. State, 30 Fla. L. Weekly D1853 (Fla. 2d DCA 2005):

Designation of defendant as a sexual predator following his conviction for sexual battery did not violate double jeopardy, even if employment restrictions applicable to sexual predators were applied to defendant prospectively; defendant did not allege a retroactive application of the statute governing such employment restrictions, did not allege that he was denied employment in a specified capacity, and did not allege that he was charged with a third-degree felony for obtaining employment in violation of the restrictions.

Thomas v. State, 716 So.2d 789 (Fla. 4th DCA 1998): Julian

Registration requirement of Florida Sexual Predators Act does not constitute double jeopardy.

No error in granting state's motion to declare defendant sexual predator in absence of defendant.

Burkett v. State, 731 So.2d 695 (Fla. 2d DCA 1998):

Sexual predator designation may be applied where portion of period when offenses were committed was outside period covered by statute and portion of period was inside period covered by statute.

Designation as sexual predator does not violate double jeopardy.

Sexual predator designation is a collateral consequence of plea and need not be orally announced.

No error in designating defendant as sexual predator in defendant's absence.

Macias v. State, 708 So.2d 1044 (Fla. 4th DCA 1998):

Post-sentencing designation of defendant as sexual predator did not violate double jeopardy clause.

Collie v. State, 710 So.2d 1000 (Fla. 2d DCA 1998):

Because registration requirements of section 775.21 are not so punitive as to negate legislature's clearly non-punitive intent, application of 1996 act does not violate Double Jeopardy Clauses.

Burkett v. State, 731 So.2d 695 (Fla. 2d DCA 1998):

Sexual predator designation may be applied where portion of period when offenses were committed was outside period covered by statute and portion of period was inside period covered by statute.

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***DUE PROCESS CASES*:**

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The appellate court affirmed and cited numerous cases that say a sexual predator designation is neither a sentence nor a punishment and is regulatory and procedural in nature.

Cheshire v. State, 32 Fla. L. Weekly D2718 (Fla. 1st DCA 2007):

Trial court violated procedural due process rights of sex offenders by communicating with the Assistant State Attorney, without notice to offenders' counsel, after Department of Corrections sent notice to the court requesting direction on whether offenders should continue to be designated as sexual offenders, or whether they should be designated as sexual predators.

Garcia v. State, 30 Fla. L. Weekly D2112 (Fla. 3rd DCA 2005):

> Registration requirements of state Sexual Offender Registration Act did not implicate offender's constitutional right to procedural due process, despite lack of provision therein for hearing to determine whether offender presented danger to public sufficient to require registration, where registration requirement was based upon fact of previous conviction rather than upon current dangerousness.

Hanson v. State, 30 Fla. L. Weekly D1677 (Fla. 5th DCA 2005):

> Sexual Predator registration statute does not substantive due process.

Milks v. State, 30 Fla. L. Weekly S55 (Fla. 2005):

> Florida Sexual Predators Act does not violate procedural due process or separation of powers.
>
> Court declines to consider substantive due processes and equal protection challenges to Act which were briefed by parties but not addressed by district courts.
>
> Discussion: This case affirms *Milks v. State*, and reverses *Espindola v. State.*

Braudaway v. State, 30 Fla. L. Weekly D222 (Fla. 2d DCA 2005):

> Florida Sexual Predator Act is not unconstitutional. *conflict certified*

Draves v. State, 30 Fla. L. Weekly D139 (Fla. 2d DCA 2005):

> Sexual predator designation does not violate procedural due process. *Conflict certified*

Moreira v. State, 30 Fla. L. Weekly D163 (Fla. 2d DCA 2005):

> Statute under which defendant was designated as sexual predator provided procedural safeguards as to afford him due process.

Genehagan v. State, 29 Fla. L. Weekly D2852 (Fla. 1st DCA 2004):

Designation of defendant as sexual predator does not violate procedural due process. *Conflict certified.*

Navarro v. State, 29 Fla. L. Weekly D2700 (Fla. 3rd DCA 2004):

No merit to constitutional challenge of sex offender registration act.

Discussion: The court notes that this statute is less intrusive than the sexual predator act and is constitutional even if the predator act is unconstitutional.

Anderson v. State, 29 Fla. L. Weekly D2595 (Fla. 2d DCA 2004):

Claim that designation as sexual predator violates right to due process may not be raised pursuant to rule 3.800 or rule 3.850.

Turner v. State, 29 Fla. L. Weekly D2437 (Fla. 5th DCA 2004):

Challenge to constitutionality of Act and assertion that substantive due process rights were violated may not be raised for the first time on appeal.

Trial court's designation of defendant as sexual predator is collateral matter and does not constitute fundamental error.

Moran v. State, 29 Fla. L. Weekly D2775 (Fla. 5th DCA 2004):

Sexual predator registration act does not violate defendant's procedural due process rights.

Linderman v. State, 29 Fla. L. Weekly D2246 (Fla. 5th DCA 2004):

Sexual Predator Act is constitutional and does not violate defendant's procedural due process rights. *Conflict certified*

Swindle v. State, 29 Fla. L. Weekly D2037 (Fla. 3d DCA 2004):

In the absence of a provision allowing for a hearing to determine whether a defendant presents a danger to the public sufficient to require registration and public notification, Florida Sexual Predators Act Violates due process. Conflict certified.

Discussion: The Third DCA seems to be going it alone on this one. Eventually, the Supreme Court will resolve the conflict among jurisdictions.

Newingham v. State, 29 Fla. L. Weekly D1930 (Fla. 5th DCA 2004):

Sexual predator statute does not violate procedural due process.

Moore v. State, 29 Fla. L. Weekly D1896 (Fla. 1st DCA 2004):

Sexual Predator act does not violate equal protection requirements.

Johnson v. State, 29 Fla. L. Weekly D1563 (Fla. 5th DCA 2004):

Sexual Predator registration statute does not violate procedural due process.

Smith v. State, 29 Fla. L. Weekly D1497 (Fla. 4th DCA 2004):

Sexual Predator Act does not deny procedural due process.

Summerall v. State, 29 Fla. L. Weekly D1098 (Fla. 2nd DCA 2004):

Sexual predator statute is not unconstitutional as a violation of procedural due process. *Conflict certified*.

Valentin v. State, 29 Fla. L. Weekly D1466 (Fla. 5th DCA 2004):

Statute did not violate procedural due process by not providing hearing before classifying defendant as sexual predator. Conflict certified.

Newell v. State, 29 Fla. L. Weekly D1429 (Fla. 2d DCA 2004):

Sexual offender registration law is not an unconstitutional denial of due process.

Springer v. State, 29 Fla. L. Weekly D1366 (Fla. 5th DCA 2004):

Sexual predator designation did not violate defendant's de process rights.

Discussion: This case provides very little discussion, but simply indicates that the issues were resolved by previous opinions.

Littlefield v. State, 29 Fla. L. Weekly D975 (Fla. 1st DCA 2004):

No merit to claim that section 943.0435, which requires the registration of sex offenders, is unconstitutional on the ground that it denies procedural due process.

Perkins v. State, 29 Fla. L. Weekly D970 (Fla. 1st DCA 2004):

Florida Sexual Predators Act does not violate due process. *conflict certified*

Woodward v. State, 29 Fla. L. Weekly D1018 (Fla. 2d DCA 2004):

Sexual Predators Act is not unconstitutional on procedural due process grounds. *conflict certified*

Rickman v. State, 29 Fla. L. Weekly D1058 (Fla. 5th DCA 2004):

Sexual Predator Act does not violate procedural due process because of failure to provide a hearing before classification of a defendant as a sexual predator. Conflict certified.

Smith v. State, 29 Fla. L. Weekly D853 (Fla. 1st DCA 2004):

Statute requiring registration of sexual offenders in not unconstitutional.

No hearing is required before the stigma of asexual offender status is imposed.

Ames v. State, 29 Fla. L. Weekly D617 (Fla. 1st DCA 2004):

No merit to claim that sexual offender statute violates right to due process under article I, section 9, of the Florida Constitution because it does not provide for a hearing prior to designation as a sexual offender.

Because the only relevant consideration for determining whether defendant qualified as a sexual offender was whether he had been convicted of an offense specified in statute, defendant's jury trial on charge of lewd and lascivious battery on child 12 year of age or older but less than 16, constituted a hearing for purpose of designating defendant as a sexual offender.

Frazier v. State, 29 Fla. L. Weekly D369 (Fla. 1st DCA 2004):

Florida Sexual Predators Act does not deny procedural due process. Conflict certified.

Glenn v. State, 29 Fla. L. Weekly D183 (Fla. 5th DCA 2004):

Sexual Predator Act does not violate substantive or procedural due process.

Miller v. State, 29 Fla. L. Weekly D144 (Fla. 5th DCA 2004):

Sexual Predator Act is constitutional. Conflict with Espindola certified.

Sigler v. State, 29 Fla. L. Weekly D1626 (Fla. 5th DCA 2004):

Sexual predator registration statue is not a violation of procedural due process.

Metaxotos v. State, 29 Fla. L. Weekly D1599 (Fla. 4th DCA 2004):

Automatic designation as sexual predator without hearing on actual risk of future offenses does not violate procedural due process rights.

Therrien v. State, 28 Fla. L. Weekly D2704 (Fla. 1st DCA 2003):

Florida Sexual Predator Act does not violate separation of powers or procedural due process requirements and is constitutional.

Retroactive application of 1998 amendment to Act, which expands sexual predator criteria, to include attempted sexual battery as a qualifying felony and permit sexual predator status without a predicate conviction, is constitutionally permissible because statue does not violate procedural due process clauses of state and federal constitutions. *Question certified.*

White v. State, 28 Fla. L. Weekly D2425 (Fla. 4th DCA 2003):

The Sexual Predators Act does not violate due process.

Espindola v. State, 28 Fla. L. Weekly D2406 (Fla. 3d DCA 2003):

Florida Sexual Predator Act's requirement of automatic determination of a defendant as a sexual predator with no bearing on the risk defendant's committing future offense violates procedural due process and the Act in unconstitutional.

Defendant who pled guilty to multiple perpetrator sexual battery and was automatically declared a sexual predator had a liberty interest infringed by the Act's registration and public notification provisions, beyond a mere stigma, which required due process under the Fourteenth Amendment, and the Act's requirements of automatic determination, in which the trial court has no discretion, afforded the defendant no process at all.

Because the Act specifically provides that sexual predators present an extreme threat to the public safety, the Act's failure to provide for a judicial

hearing on the risk of defendant's committing future offenses makes it violative of procedural due process. *Conflict Certified.*

Discussion: This opinion serves to withdraw the court's previous opinion at 28 Fla. L. Weekly D222 and substitute it with this opinion. Basically, this court ruled the statute unconstitutional on other grounds, but the U.S. Supreme Court ruled to the contrary in similar cases. This court then took another shot at the statute from a different angle.

Reyes v. State, 28 Fla. L. Weekly D2131 (Fla. 4th DCA 2003):

Designating individual as sexual offender without evidentiary hearing does not violate procedural due process rights.

Registration requirements of Act do not violate substantive due process rights.

Act does not facially violate separation of powers principles by making sexual predator designation mandatory for all defendants who meet statutory criteria.

Milks v. State, 28 Fla. L. Weekly D1107 (Fla. 2d DCA 2003):

Sexual Predator Act does not violate constitutional principles of separation of powers.

Because reporting requirement of Florida's act are determined solely by a defendant's conviction for a specified crime, the conviction itself is "a fact that a convicted offender already had a procedurally safeguarded opportunity to contest."

Procedural due process does not require hearing to prove defendant's actual dangerousness, because the fact is not relevant to statutory scheme.

Discussion: This court relies on *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160 (2003), in rejecting defendant's constitutional arguments. The court notes that Florida's reporting requirements are similar to those in Connecticut and are therefore covered by the Supreme Court opinion. The court ominously concludes it's opinion by stating, "The Supreme Court has not determined whether the Connecticut act or ones similar to it violate substantive due process. However, Mr. Milks, like Mr. Doe, has not raised the claim. We therefore affirm the order designating Mr. Milks a sexual predator."

Espindola v. State, 28 Fla. L. Weekly D222 (Fla. 3rd DCA 2003): *reversed*

> Florida Sexual Predator Act's requirement of automatic determination of a defendant as a sexual predator with no hearing on the risk of defendant's committing future offenses violates procedural due process and the Act is unconstitutional.
>
> Defendant who pled guilty to multiple perpetrator sexual battery and was automatically declared a sexual predator had a liberty interest infringed by the Act's registration and public notification provisions, beyond a mere stigma, which required due process under the Fourteenth Amendment, and the Act's requirement of automatic determination, in which the trial court has no discretion, afforded the defendant not process at all.

Johnson v. State, 25 Fla. L. Weekly D2761 (Fla. 5th DCA 2000):

> Trial court properly ruled that statutes containing designation, registration, and community notification requirements for sexual offenders are not unconstitutional. Statutes do not violate privacy or due process rights of offenders.
>
> Discussion: The appellate court complemented and adopted the order of the trial judge to form this opinion. Good job Judge Briese.

EQUAL PROTECTION CASES

State v. Wooding, 33 Fla. L. Weekly D1654 (Fla. 3rd DCA 2008):

> Registration statute was facially constitutional as applied to defendant who was charged with failing to register as a sexual predator, as determined by *Milks v. State* and *Connecticut Department of Public Safety v. Doe*; defendant claimed that statute, as applied, was unconstitutional as it was vague and violated his equal protection rights, including the right to travel without having a permanent or temporary residence. Registration statute was facially constitutional as applied to defendant who was charged with failing to register as a sexual predator, as determined by *Milks v. State* and *Connecticut Department of Public Safety v. Doe*; defendant claimed that statute, as applied, was unconstitutional as it was vague and violated his equal protection rights, including the right to travel without having a permanent or temporary residence.

Miller v. State, 33 Fla. L. Weekly D79 (Fla. 5th DCA 2008):

Defendant argued that the failure to register statute violates his right to equal protection by requiring him to register with the Florida Sex Offender Registry as a result of an offense he committed in West Virginia in 1994, while exempting similarly-situated Florida sex offenders from the registration requirement.

The court ruled statute requiring sexual offender to report in person at driver's license office did not violate equal protection; challenged statute applied to all similarly situated persons, did not intentionally discriminate against sex offender alone, and passed rational basis scrutiny.

Butler v. State, 31 Fla. L. Weekly D845 (Fla. 4th DCA 2006):

Sexual predator statute was not unconstitutional burden on right to travel.

Irrebuttable presumption of dangerousness in sexual predator statute was not unconstitutional; although it could be that some persons designated sexual predators would not pose potential threat to society, there was substantial likelihood of recidivism, and society had right to protect its citizens, particularly its children, from such individuals.

EX POST FACTO CASES:

Freeland v. State, 28 Fla. L. Weekly D102 (Fla. 1st DCA 2003):

Sexual offender registration and reporting requirements are regulatory and procedural in nature and do not violate the ex post facto clause.

Gonzalez v. State, 27 Fla. L. Weekly D531 (Fla. 3rd DCA 2002):

Trial court properly declared defendant, who committed crime in 1995, a sexual predator under the 1997 Act because the Act's notification requirements are regulatory and procedural and do not constitute punishment, hence their modification cannot violate the ex post facto clause.

Donovan v. State, 26 Fla. L. Weekly D173 (Fla. 5th DCA 2001):

No error in denying relief on claim that plea would not have been entered if defendant had known that he would be required to report to FDLE as convicted sex offender.

Sexual offender reporting requirement is collateral consequence of plea.

Sexual offender statute is regulatory in nature and does not violate ex post facto clause.

Discussion: This is another appellate attempt to close the Pandora's Box opened by the 4th DCA in the Wiita opinion. This case specifically distinguished the facts from those in Wiita to justify its conclusion.

Simmons v. State, 753 So.2d 762 (Fla. 4th DCA 2000):

Sexual offender statute requiring sex offenders to submit to digital photograph which can be disseminated on Internet are regulatory and procedural in nature and do not violate ex post facto clause.

Statutes do not alter definition of criminal conduct and do not constitute punishment.

Rickman v. State, 714 So.2d 538 (Fla. 5th DCA 1998):

Requirements that defendant register under Florida Sexual Predators Act and comply with additional provisions of Act do not constitute ex post facto punishment or double jeopardy violation.

Registration requirement of Act is procedural and regulatory in nature and does not constitute punishment.

Steel v. State, 712 So.2d 1256 (Fla. 4th DCA 1998):

Where a statute has been repealed, but provisions of the repealed statute have been substantially re-enacted, the re-enacted provisions are deemed to have been in operation continuously from the original enactment.

Because the registration requirement in the 1995 Sexual Predator act was contained in the statute as it existed at the time of the instant crime, requiring appellant to register was not an ex post facto violation.

Courts have universally recognized that the registration provisions in sexual predator statutes are regulatory, not punishment, and are thus not ex post facto violations.

Amendments which require law enforcement agencies to post names and addresses of sexual predators on Internet are regulatory and procedural in nature.

Requirement that registered sexual predators secure new driver's licenses or identification cards within 10 days of a change of address and to pay the cost thereof does not constitute ex post facto imposition of costs.

Collie v. State, 710 So.2d 1000 (Fla. 2d DCA 1998):

- Trial court did not exceed its jurisdiction in designating defendant to be sexual predator more than sixty days after sentencing.
- New substantive provisions in amended statute regarding dissemination of public information and restrictions on employment and volunteer work which were added after commission of offense cannot be applied retrospectively.
- Because retrospective application of section 775.21 for purpose of seeking sexual predator designation did not increase penalty by which defendant's sexual offense was punishable, ex post facto challenge must be denied.
- Pleas bargain was not violated by subsequent sexual predator designation.
- Defendant was on notice that he would be subject to sexual predator classification by its publication in Laws of Florida or Florida Statutes.
- Designating an offender to be sexual predator after he or she has entered plea bargain does not constitute breach of contract because sexual predator designation is not form of punishment.
- Because registration requirements of section 775.21 are not so punitive as to negate legislature's clearly non-punitive intent, application of 1996 act does not violate Double Jeopardy Clauses.
- Argument that sexual predator designation, but itself, infringes on defendant's liberty rights is rejected because sexual predator statute, as applied to defendant, is non-punitive and remedial in nature.
- The only provision in 1996 Act which, if applied retrospectively, would infringe on constitutionally-protected liberty interest is employment restrictions imposed in section 775.21(9)(b).
- Review of 1996 Act does not reveal any deprivations of defendant's due process rights where employment restrictions are not applicable to defendant because they were not in effect at time he committed his current offense, and defendant has failed to argue on appeal that he is prohibited from pursing certain employment due to sexual predator designation.
- Procedural due process guarantees of hearing and opportunity to be heard are inapplicable as to defendant.
- Sexual predator proceedings were not criminal or quasi-criminal in nature and defendant had no constitutional right to counsel.

State v. Segundo Carrasco, 701 So.2d 656 (Fla. 4th DCA 1997):

> Error to deny state's petition to require public notice of presence of sexual predator on ground that statute had been repealed. Where statute was substantially re-enacted by a statute containing additions to or changes in original, re-enacted revisions were deemed to have been in operation continuously for original enactment. Registration statutes are regulatory in nature and do not constitute punishment subject to constitutional ex post facto challenges.

Fletcher v. State, 699 So.2d 346 (Fla. 5th DCA 1997)

> Florida Sexual Predators Act violates neither ex post facto clause nor Rule 3.800 because designation "sexual predator" is neither a sentence nor punishment, but a status resulting from conviction of certain crimes.

HOMELESS OFFENDERS

Cowart v. State, 2018 WL 5092177, at *1 (Fla.App. 2 Dist., 2018)

The following language was used in an information charging the defendant with failure to register as a sexual predator every 30 days as a transient:

> *[O]n or between September 2, 2016 and September 29, 2016, in the County of Polk and State of Florida, ANTHONY FRANK COWART, a sexual predator, did knowingly and unlawfully fail to register, or after registering, did fail to provide during reregistration all changes to his address of a current temporary residence within the state or out of state, a rural route address and a post office box if there was no permanent or temporary address, a transient residence within the state, the address, location and description and dates of any current or known future temporary residences within the state or out of state, and/or failed to register in person at an office of the sheriff within 48 hours after establishing a permanent, temporary or transient residence within this state, and/or he failed to report in person to an office of the sheriff within 48 hours of vacating his permanent, temporary, or transient address and failing to establish or maintain another permanent, temporary or transient address, contrary to Florida Statute 775.21. (3 DEG FEL) (LEVEL 7)*

The court made some interesting observations about this very confusing charge:

> *Notwithstanding the State's indefensible linguistic buckshot… As an initial matter, and as is abundantly clear, the information charges a whole host of offenses.*

In spite of this shotgun approach, the state still failed to allege the essential elements of the offense as it relates to transient offenders registering every 30 days. The court ruled the information was clearly defective, but since the defense did not make the appropriate objections, the conviction was affirmed. The court noted the defendant was free to appeal again on proper grounds.

Goodman v. State, 2013 WL 2462116 (Fla. 1st DCA 2013):

County sheriff's office policy of requiring registered sex offenders who were perpetually itinerant within the county to report in person to its main office by 10:00 a.m. each Monday morning to specify where they intended to spend the next seven nights and to provide a weekly "log" of their whereabouts comported with statute governing sex offender registration requirements as applied to transient sex offender; while statute did not specifically authorize either the "report in person" or "log" requirement, statute clearly envisioned that sheriff's offices had to establish some protocols by which a transient registered offender presented himself in person and provide locational information, and nothing in statute compelled any particular means for compiling and recording the addresses or places where transient registered offenders would be located.

Special instruction in prosecution of sex offender for failure to appear in person at county sheriff's office and provide required locational information, which characterized the offense as a failure to notify the sheriff where he would be located for the following week did not contribute to jury confusion or misstate sex offender's responsibilities under the statute governing sex offender registration, though use of statutory language would have been preferable.

State v. Cutwright, 35 Fla. L. Weekly D1708 (Fla. 1st DCA 2010):

Defendant could be prosecuted for violating the Career Offender Registration Act even though he was homeless; the Act required an offender to report in person to a driver's license office within two working days after any change of the offender's residence, which would include registering a new address, or, if no new address was available, reporting the abandonment of a previous residence.

INSUFFICIENT ATTEMPTS BY OFFENDER TO REGISTER

Boltri v. State, 2015 WL 6493358 (Fla.App. 4 Dist.,2015)

> Defendant's cursory and incomplete attempt at compliance with sex offender registration requirements did not satisfy reregistration requirements so as to preclude conviction for failure to properly register as a sex offender, where defendant appeared in person at the sheriff's office, was allegedly told he needed an updated identification in order to reregister, and then took no action before his arrest to attempt to comply with the officer's instructions and ensure that he was properly reregistered.
>
> A sex offender must actually complete the reregistration process, or at least show good cause for the failure to do so, in order to be compliant with Florida registration requirements.
>
> The law may be able to make accommodations for legitimate obstacles to compliance with sex offender registration requirements but cannot accept an admission of defeat at the first sign of resistance.

Barnes v. State, 38 Fla. L. Weekly D487 (Fla. 1st DCA 2013):

> In prosecution of defendant for failure to register as sex offender, trial court erred when it failed to give defendant's requested special instruction on his sole theory of defense, namely that, if jury believed State had misinformed defendant or otherwise prevented him from timely registering at Department of Highway Safety and Motor Vehicles (DHSMV), then defendant had affirmative defense to the charge; defendant stated that, when he timely reported in person to DHSMV, after successfully registering with sheriff's office, an agency employee turned him away without providing him with any proof that he had appeared and attempted in good faith to comply with statutory reporting requirements, and standard instruction given by court was inadequate to cover defendant's theory of defense.
>
> Defendant is entitled, upon request and by law, to a jury instruction on the law pertaining to the theory of defense if any evidence supports the theory, irrespective of how weak this evidence is.

INSUFFICIENT EVIDENCE AT TRIAL

Demus v. State, 2019 WL 5076242 (Fla.App. 4 Dist., 2019)

State failed to prove defendant failed to report as a sex offender within 48 hours of establishing a residence within county, where Florida Department of Law Enforcement employee's testimony that she searched several databases and discovered that defendant never registered within 48-hour period after release from custody of Department of Corrections proved only that defendant had not registered in county, and employee offered no evidence that defendant ever established any type of residence in county.

No evidence existed to show defendant established residence in county, for purposes of registering as a sex offender, although Florida Department of Law Enforcement employee testified she received a tip that defendant did reside in county and reviewed a video showing defendant shopping in grocery store in county, where employee had no personal knowledge of defendant's whereabouts, employee did not provide any details about either tip or video, and employee did not provide a date for either tip or video.

State did not prove defendant changed his residence, as would require defendant to notify state of change within 48 hours due to his conviction as sexual offender, where inmate release form confirmed defendant would return to his prior city of residence outside of county upon release form custody of Department of Corrections.

Clay v. State, 2017 WL 3785802 (Fla.App. 5 Dist., 2017)

State failed to establish that defendant was released from incarceration on or after effective date of sex-offender registration statute and, thus, failed to establish that defendant was a sexual offender subject to registration requirements, in prosecution for failure to comply with the registration requirements, although defendant was given a ten-year sentence approximately two years before statute's effective date; State presented no direct evidence of defendant's release date and could not rely merely on inference that, given length of defendant's sentence and date it was imposed, he must have been released from incarceration after statute's effective date.

Peterson v. State, 2016 WL 4396006 (Fla.App. 1 Dist.,2016)

Evidence did not support conviction of defendant, who was sex offender, for failing to report change of residence; there was no evidence that defendant failed to report to a driver's license office, as charged in the information, and defendant was not required to report to sheriff's office since State did not prove that defendant became homeless or that he otherwise vacated one residence while failing to establish another.

Figueroa v. State, 2015 WL 248853 (Fla.App. 2 Dist.):

> Evidence that defendant, a registered sexual offender, changed his residence to a country outside the United States and failed to report change in person to State's driver's license office was insufficient to support conviction for failing to register as a sexual offender, even though statute did not specifically state that it applied only to an offender's change of residence within the State; State offered no evidence of an interim move within the State that would have triggered requirement to report to office about change in residence, it would have been impossible for someone living outside the country to appear in person at office, and defendant was not eligible to obtain a State driver's license or identity card as a resident of another country.

Brown v. State, 34 Fla. L. Weekly D1242 (4th DCA 2009):

> Evidence was insufficient to show defendant, previously convicted of failure to register as a sex offender, willfully and substantially violated probation by failing to produce valid identification to Department of Highway Safety and Motor Vehicles (DHSMV) for purposes of registration after being instructed to do so; defendant testified that he was told that he needed birth certificate in order to get identification card or otherwise register with DHSMV, and defendant's unrefuted testimony was that he was unable to obtain birth certificate in his home state because facility from which he could obtain copy had burned down.

Almond v. State, 34 Fla. L. Weekly D372 (Fla. 1st DCA 2009):

> Evidence of defendant's sex offender registration forms and applications for a driver's license were inadmissible hearsay in failure to register as a sexual offender case; none of these documents were self-authenticating business records, a record custodian was not present to testify as to their authenticity, and they did not fall under the public records exception to the hearsay rule.
>
> Deputy's testimony that he verified defendant did not reside at registered address after speaking to a resident of the address, that he located defendant after speaking to defendant's girlfriend, that defendant was residing at different address in violation of the sexual offender registration requirements, and that he knew defendant was required to register as a sexual offender because of notice he received from the Florida Department of Law Enforcement (FDLE), was inadmissible hearsay in failure to register as a sexual offender case.

Defendant's written statement could not be admitted into evidence, in failure to register as sexual offender case before the state had established the corpus delicti of the charged crime.

Hines v. State, 29 Fla. L. Weekly D1910 (Fla. 4th DCA 2004):

Evidence that probation officer was unable to locate defendant at his registered residence after five attempts during a thirty-six hour period was insufficient to prove that defendant permanently or temporarily changed his residence pursuant to sexual offender registration statute.

Discussion: Keep this case in mind when your officer files a failure to register case because he went by the defendant's house and it did not look like anyone was living there.

Jackson v. State, 27 Fla. L. Weekly D7 (Fla. 2d DCA 2002):

Error to find violation of statute requiring sexual offenders to register with Department of Highway Safety and Motor Vehicles when renewing driver's licenses where defendant's driver's license was not renewed, but instead was automatically reinstated after he paid traffic fines.

Although defendant was designated sexual predator, and statute cited by state pertained to sexual offenders, under either statute registration requirement is triggered by renewal of driver's license.

INSUFFICIENT PREDICATE OFFENSES FOR PREDATOR DESIGNATION

Conley v. State, 2021 WL 3232608 (Fla.App. 5 Dist., 2021)

Defendant was convicted of Kidnapping with the intent to facilitate a felony, four counts of sexual battery and one count of unlawful sexual activity. Defendant claimed trial court erred in ruling him a sexual predator because he did not any of the requisite prior convictions. The appellate court ruled that although the trial court was in error for designating him a sexual predator based on the second degree sexual batteries and unlawful sexual activity, the defendant still qualified based on the single conviction of kidnapping, a first degree felony punishable by life.

Wright v. State, 2017 WL 6390370 (Fla.App. 5 Dist., 2017):

Defendant was improperly designated a sexual predator when he was convicted of lewd or lascivious battery, a second degree felony, and had no prior sex offenses.

Hardy v. State, 2017 WL 239406 (Fla. Dist. Ct. App. Jan. 20, 2017)

For sexual predator designation, the conviction and sentence on the predicate prior felony must be entered before the current felony is committed.

Watkins v. State, 2011 WL 1195882 (Fla.App. 5 Dist.)

Court erred in declaring defendant a sexual predator based upon convictions of F.S. 847.0135(3) and (4). By clear language of the statute, these statutes only qualify for sexual offender registration.

Ealum v. State, 31 Fla. L. Weekly D3104 (Fla. 1st DCA 2006):

Absence of evidence that defendant, who pled nolo contendere to three counts of the second-degree felony of lewd or lascivious exhibition, had a prior conviction for one of the crimes specified in sexual predator statute precluded defendant's designation as a sexual predator, even though defendant did not raise the issue in the trial court; defendant had no opportunity to raise the issue, since order of designation was entered same day State filed motion seeking the designation, and trial court never made a determination of whether defendant had prior qualifying convictions.

A defendant should not file any civil motion or proceeding to challenge a sexual predator designation.

Sanchez v. State, 29 Fla. L. Weekly D1588 (Fla. 3rd DCA 2004):

Error to designate defendant as sexual predator where no proof of a qualifying prior offense was introduced prior to the designation.

Discussion: A very brief opinion.

Nicholson v. State, 28 Fla. L. Weekly D1352 (Fla. 5th DCA 2003):

Defendant's conviction for second degree felony lewd or lascivious molestation did not qualify him as a sexual predator.

Convictions for two separate offenses which occurred at same time and were scored on same scoresheet do not qualify defendant for sentencing as sexual predator.

Nichols v. State, 28 Fla. L. Weekly D1212 (Fla. 5th DCA 2003):

Error to enter written order finding that defendant was sexual predator without hearing, upon proper notice to defendant.

Where defendant was convicted of lewd and lascivious assault on child under age 16 in violation of F.S. 800.04, he must have a previous conviction of certain enumerated offenses in order for sexual predator designation to apply, and trial court made no determination regarding whether defendant had any qualifying previous convictions.

Remand for hearing, upon proper notice, to allow state to demonstrate by competent evidence that defendant is qualified for designation and to allow defendant to contest designation.

Garcia v. State, 27 Fla. L. Weekly D2261 (Fla. 2d DCA 2002):

Error to designate defendant as sexual predator where defendant was convicted of committing a lewd and lascivious act, a second-degree felony, and did not have previous conviction of any of the offenses enumerated in statute.

Hartline v. State, 743 So.2d 90 (Fla. 5th DCA 1999):

Where defendant was convicted of indecent assault upon a child by commission of an act defined as sexual battery, trial court erred in reclassifying convictions from second degree felony to first degree felony on the ground that there were multiple perpetrators. Enhancement statute does not apply to section 800.04(3).

Error to declare defendant sexual predator based on first degree felony conviction for sexual battery on child with multiple perpetrators.

State v. Johnson, 693 So.2d 711 (Fla. 4th DCA 1997): (Dimitrouleas)

"We affirm appellant's conviction for sexual battery on a person under the age of 16. We reverse, however, the trial court's decision to declare appellant a sexual predator, as there is no evidence in the record of prior sexual offense."

Branciforte v. State, 678 So.2d 426 (Fla. 2d DCA 1996):

> In prosecution for possession of child pornography, condition of probation requiring registration as a sexual predator stricken because the subject offenses are not within the registration criteria as set forth in statute.

ISSUING PREDATOR ORDER AFTER SENTENCING

Evans v. State, 2022 WL 39422 (Fla.App. 4 Dist., 2022)

> A circuit court has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, when the sentencing court did not impose the designation at sentencing and the offender's sentence has been completed.

Salas v. State, 2022 WL 163920 (Fla.App. 3 Dist., 2022)

> A trial court does not lose jurisdiction to impose a sexual predator designation when the sentencing court did not impose the designation at sentencing

Lucas v. State, 2021 WL 5969822 (Fla.App. 5 Dist., 2021)

> A trial court does not lack jurisdiction to designate a defendant as a sexual predator after a defendant has completed serving his sentence.

State v. McKenzie, SC19-912, 2021 WL 4314052 (Fla. Sept. 23, 2021)

> Designation as sexual predator based on qualifying offense of engaging in sexual activity with child while in position of familial or custodial authority was neither sentence nor punishment, and thus was not basis for depriving trial court of jurisdiction to impose designation after defendant had completed serving sentence; rather, sexual predator designation was merely status resulting from conviction for qualifying crime.
>
> Trial court's failure to designate defendant as sexual predator at sentencing for engaging in sexual activity with child while in position of familial or custodial authority, which was enumerated offense that subjected defendant to designation, in accordance with statute requiring it to do so, did not deprive trial court of jurisdiction to designate defendant as sexual predator after he completed sentence, based on absence of reference to statute in subsection directing any law enforcement agency to notify state attorney to bring matter to court's attention; subsection merely set forth procedural notice requirements, and nothing in statutory scheme could be read to thwart

Legislature's express goal of protecting public from sexual predators by relieving defendant of sexual predator designation and registration requirements based solely on trial court's failure to impose designation at sentencing.

Johnson v. State, 2020 WL 6153386 (Fla.App. 3 Dist., 2020)

Clayton Johnson appeals a November 5, 2019 order designating Johnson a sexual predator pursuant to section 775.21 of the Florida Statutes. This designation was appropriate even though the trial court entered the subject order after Johnson served his sentence for the qualifying offense and was released from custody.

McKenzie v. State, 2019 WL 2062785 (Fla.App. 5 Dist., 2019) *overruled*

State sexual predator statute did not allow court to designate defendant, who had completed his jail time, community control, and probation, as sexual predator, where it had not done so at defendant's sentencing, and state had not sought such designation prior to defendant completing his sentence.

Almond v. State, 37 Fla. L. Weekly D1305 (Fla. 2d DCA 2012):

Trial court did not lack jurisdiction to designate defendant convicted of sexual battery as sexual predator, for purposes of registration requirements under Sexual Predators Act, more than 12 years after judgment of sentence, despite statutory requirement that such finding be made at sentencing, where defendant was still on probation for sexual battery at time of designation, sexual battery was life felony, and under Act, defendant was sexual predator as matter of law based on qualifying offense, and Act provided procedure for making such designation in event that finding was not made at sentencing.

Although sexual predator law contemplates that the trial court will designate a defendant as a sexual predator at sentencing, the designation may be entered after sentencing, but while the sentence is being served.

Cuevas v. State, 35 Fla. L. Weekly D (Fla. 3rd DCA 2010):

The State had the authority to seek to have defendant declared a sexual predator after he had completed his sentence and had been released from prison; the sexual predator statute did not impose a criminal penalty, and

the statute did not state that the consequence of a failure to make a written sexual predator finding at the time of sentencing constituted a waiver of the right to make that finding in the future.

Bach v. State, 32 Fla. L. Weekly D662 (Fla. 4th DCA 2007):

Defendant's postconviction claim of affirmative misadvice could not be raised for the first time in motion for rehearing of the denial of his motion for postconviction relief, which alleged that his designation as a sexual predator after being sentenced for violation of probation breached his plea agreement.

Defendant's designation as a sexual predator several years after he was sentenced for violation of his probation did not breach defendant's original plea agreement, which provided for designation as a sexual offender; violation of probation allowed trial court to impose any sentence it could have lawfully imposed before placing him on probation, and law at time of defendant's crimes required his designation as a sexual predator based on his qualifying convictions.

Shepherd v. State, 30 Fla. L. Weekly D2492 (Fla. 2d DCA 2005):

Trial court lacked jurisdiction to amend sentence and designate defendant a sexual predator while case was pending appeal; sexual predator designation was imposed upon State's motion, following defendant's molestation conviction, but not until trial court had already sentenced defendant and classified him as a sexual offender, and defendant had filed notice of appeal.

King v. State, 30 Fla. L. Weekly D2297 (Fla. 2d DCA 2005):

A sexual predator designation (1) may be imposed or modified after sentencing without regard to time limits established in rule regarding reduction and modification of sentences; (2) may be directly appealed as a portion of an unlawful or illegal sentence; (3) may be directly appealed under rule governing appeals of orders entered after final judgment if it is entered after the time to appeal the judgment and sentence has expired; (4) may be challenged under rule governing motions to correct sentencing errors in order to preserve issue for direct appeal; and (5) may be challenged like a sentencing issue by postconviction motions to correct, vacate or set aside sentence.

Walker v. State, 718 So.2d 217 (Fla. 4th DCA 1998):

Trial court could properly designate defendant as sexual predator after defendant had been sentenced for current offense.

JUVENILE and YOUTHFUL OFFENDER ISSUES

D.S. v. State, 2019 WL 1142380 (Fla.App. 4 Dist., 2019)

This case provides a discussion about the findings a court must make when requiring a juvenile to register as a sexual offender. The court notes the juvenile must have been 14 years of age or older at the time of the offense and the touching involved unclothed genitals or coercion.

M.B. v. State, 2015 WL 1071057 (Fla.App. 5 Dist.):

Court improperly required juvenile to register as a sexual offender based upon the charge of lewd molestation when he touched the victim on top of the clothing.

Bish v. State, 2014 WL 2208134 (Fla.App. 2 Dist.):

Defendant who was convicted of a sex offense as a juvenile, prior to effective date of provision of statute that required offenders convicted of sex offenses as juveniles to register as sex offenders, was not required to register as a sex offender, and, therefore, could not be convicted of failure to register as a sex offender, where defendant was convicted as a juvenile in another state and moved to Florida after the effective date of the provision at issue.

State v. Williams, 36 Fla. L. Weekly D2746 (Fla. 1st DCA 2011)

Defendant was not required to register as a sexual offender because her adjudication of delinquency for misdemeanor sex offense occurred when she was only thirteen; only those adjudicated delinquent when 14 years of age or older at the time of the offense are required to register.

K.J.F. v. State, 44 So.3d 1204 (Fla. 1st DCA 2010):

Juvenile who had pled guilty to sexual battery, lewd or lascivious molestation, lewd or lascivious exhibition, and false imprisonment, but for whom trial court had withheld adjudication of delinquency and placed him on probation, was not a "sexual offender" who was required to register as such, as statute governing registration of juvenile sexual offenders defined "sexual offender," in part, as a juvenile who had been adjudicated

delinquent, statute addressing reporting requirements of adults and juveniles defined the word "convicted" as including an adjudication of delinquency of a juvenile, but neither statute contained any mention of a withhold of adjudication in any context, and, thus, legislature did not envision a withhold of adjudication as a "conviction" or as a basis for designating a juvenile a sexual offender.

Davis v. State, 16 So.3d 995 (Fla. 5th DCA 2009):

Defendant's conviction for sexual battery on a child under 12 by a person under 18 years of age, resulting in youthful offender sentence, triggered designation as a sexual predator; defendant was sanctioned as an adult.

Turner v. State, 31 Fla. L. Weekly D2332 (Fla. 5th DCA 2006):

Defendant adjudicated guilty in Minnesota of offense comparable to Florida's lewd and lascivious battery statute and who was required to register as sex offender in Minnesota was required to register as sex offender in Florida.

Statute extending scope of sex offenders subject to registration requirement to those designated as such in other state and subject to registration in that state did not violate equal protection, but was rationally related to legislature's intent to include Florida residents who had been designated sex offenders by other state.

Discussion: The defendant was adjudicated delinquent for committing the equivalent of a lewd battery in Minnesota. Under Minnesota law, juvenile adjudications require registration. In Florida they don't. Even though the defendant would not be required to register if his conviction was in Florida, he still has to register by virtue of his requirements in Minnesota. Keep in mind, that in this situation, simply introducing his certified judgments would not suffice. You would have to introduce proof of his registration requirement instead.

DeJesus v. State, 28 Fla. L. Weekly D2845 (Fla. 4th DCA 2003):

Case holding that sexual offender statute was inapplicable to juvenile proceedings does not apply to instant case involving youthful offender sentence, which is an adult sentence.

Court rejects contention that, because registration is not required until 48 hours after release from supervision defendant does not have to register until

he is released from probation. Term "release" in statute is for offenders serving prison time, not for those on probation.

State v. Mikelarry Colon, 27 Fla. L. Weekly D1541 (Fla. 3rd DCA 2002):

Sexual predator statute does not apply to juveniles who have been charged as adults but sentenced to juvenile sanctions.

State v. J.M., 27 Fla. L. Weekly S621 (Fla. 2002):

Juveniles who may be charged as adults, but are actually adjudicated as delinquents, do not stand criminally convicted for purpose of designation as sexual predator under Florida Sexual Predators Act.

Under plain reading of controlling statutes, an adjudication of delinquency does not fall under definition of a felony criminal conviction required under Act, and, thus, an adjudication of delinquency does not trigger sexual predator status provision of Predator Act.

Legislature's enactment of separate and specific notification and registration scheme for juvenile sexual offenders clearly implies Legislature's intent not to subject juveniles who are adjudicated delinquent to designation under adult Predator Act.

Because Predator Act does not expressly include adjudications of delinquency as convictions, language of section 985.233 excluding juvenile adjudications from being considered criminal convictions controls.

T.R.B. v. State, 26 Fla. L. Weekly D2476 (Fla. 1st DCA 2001):

Error to declare juvenile to be a sexual predator where juvenile was prosecuted as an adult but was given juvenile sanctions.

Adjudication of delinquency cannot be deemed a conviction for purposes of sexual predator statute.

Question certified.

State v. Bouchillon, 29 Fla. L. Weekly D1840 (Fla. 4th DCA 2004):

Designation as a youthful
offender does not preclude sentencing under Sexual Predator Act.

KIDNAPPING AND FALSE IMPRISONMENT

Brinson v. State, 2020 WL 808276, at *3 (Fla. Dist. Ct. App. Feb. 19, 2020)

Defendant argued that he was improperly designated a sexual offender on a false imprisonment charge because the court never made a written finding that there was a sexual component to the crime. In rejecting the defendant's argument, the court noted:

> *There is no requirement for a trial court designation or written findings to activate the sexual offender status. To deactivate the automatically assigned sexual offender status, a defendant must challenge the assignment by asserting a lack of sexual predicate. If the State does not concede the absence of a sexual component, the defendant must carry the burden of proof for that deactivation. Here, Brinson failed to do so.*

The court also ruled that the trial court did not have to make a specific finding designating defendant a sexual offender. The status automatically attaches upon conviction of an enumerated offense.

Munroe v. State, 2011 WL 4105002 (Fla.App. 2 Dist.)

Defendant was required to register as a sex offender, and thus could be convicted for failing to register, based on underlying conviction for false imprisonment, since victim of underlying offense was a minor who was not defendant's child and evidence indicated a sexual component to the underlying offense.

Munroe v. State, 28 So.3d 973 (Fla. 2d DCA 2010):

To convict a defendant of failure to register as a sexual offender, the State must prove beyond a reasonable doubt that the defendant is a sexual offender unless the defendant stipulates that he or she is a sexual offender.

Where a sexual offender designation is based on a conviction for a crime that does not necessarily include a sexual component, such as false imprisonment, the State must also prove that there was a sexual component to the crime.

State v. Robinson, 29 Fla. L. Weekly S112 (Fla. 2004):

Sexual Predators Act is unconstitutional as applied to a defendant whose crime indisputably did not contain a sexual element.

Application of Act to defendant who was convicted of kidnapping of a minor of whom he was not the parent was a violation of substantive due process where the crime was committed without any sexual motivation or purpose.

Maceo v. State, 28 Fla. L. Weekly D2467 (Fla. 3rd DCA 2003):

Conviction of life felony of armed kidnapping did not qualify defendant for designation as sexual predator where victim was not a minor.

Convictions of sexual battery did not qualify defendant for designation as a sexual predator where offenses were second degree felonies.

Defendant did not qualify for designation as sexual predator where he had not previously been convicted of, pled nolo or guilty to, or been found to have committed any of the enumerated prior offenses which would qualify him for classification as a sexual predator.

Raines v. State, 805 So.2d 999 (Fla. 4th DCA 2001):

Section 943.0435, Florida Statutes (2000), violates equal protection as to those defendants convicted of false imprisonment where it is undisputed that the offense was committed without any sexual motivation. Question certified

Sexual offender classification which includes those who have not committed a sexually-related crime is not rationally related to legitimate government interest.

Sexual offender statute improperly differentiates between non-parent convicted of committing a non-sexual offense against a child, such as simple battery, and a non-parent convicted of committing a non-sexual kidnapping or false imprisonment of a child.

Judgment and sentence resulting from defendant's plea to charge of failure to report within 48 hours of changing residential address, while being a sex offender, and plea to violating probation based upon that substantive offense reversed.

Robinson v. State, 26 Fla. L. Weekly D2642 (Fla. 4th DCA 2001):

Sexual predator statute is unconstitutional as applied to defendant who was convicted of carjacking and kidnapping a baby girl but who had not engaged in any sexual act upon or in presence of child. Designation is reversed.

Walker v. State, 28 Fla. L. Weekly D1839 (Fla. 5th DCA 2003):

Sexual predator statute applied to defendant who pled guilty to lewd or lascivious molestation of child and lewd or lascivious exhibition, wherein the victim was defendant's minor child.

Portion of statute limiting sexual predator designation to felonies where the victim is a minor and the defendant is not the victim's parent applies only when defendant is convicted of violating chapter 787.

KNOWLEDGE REQUIREMENT

Crosby v. State, 2017 WL 2729867 (Fla.App. 5 Dist., 2017)

Evidence of prior convictions to establish knowledge of reporting requirements in cases such as this has no probative value when such knowledge is undisputed.

Defendant testified that he knew his registration requirements, but a Sheriff Deputy misadvised him about when he had to re-register. The court ruled that since knowledge of reporting requirements was not a disputed issue, the State should not have introduced the fact that the defendant had been convicted for failure to register twice before.

Jenkins v. State, 2015 WL 8950643 (Fla.App. 4 Dist.,2015)

Defendant was charged with failing to register as sexual offender. His defense was that someone at the stockade told him that he could not register as long as he had outstanding warrants. Trial court excluded the statement as hearsay.

State v. Giorgetti, 29 Fla. L. Weekly S 95 (Fla. 2004):

Before a sexual offender may be held criminally liable for failing to register, state must prove that he was aware of a registration requirement.

Giddens v. State, 29 Fla. L. Weekly D140 (Fla. 5th DCA 2004):

Crime of failure to register change of address has knowledge element. Question certified

Discussion: The defendant in this case was illiterate and had an IQ of 69. The trial court made a finding that the defendant did not intentionally fail to register because of his lack of mental ability to understand the requirement of filing.

Krampert v. State, 34 Fla. L. Weekly D1179 (Fla. 2d DCA 2009):

The trial court instructed the jury that the State need only establish that Krampert was a sexual predator and that he failed to reregister as a sexual predator during the sixth month following his birth month. This instruction omitted the knowledge element and precluded the jury from determining whether Krampert knowingly failed to reregister. The instruction was an incorrect statement of the law and had the effect of negating Krampert's only defense: that he did not knowingly fail to reregister.

Because the trial court erroneously concluded that knowledge was not an element of the crime, it excluded Krampert's evidence on the issue of whether he knowingly violated the statute. Had the jury heard and accepted Krampert's defense, that based on his discussion with the deputy he believed he had satisfied his reregistration requirement for July 2006, the jury may have returned a not guilty verdict. Thus, we conclude that the trial court's failure to give correct instructions to the jury constitutes fundamental error, and we reverse and remand for a new trial. The deputy's statement to Krampert was not hearsay because it was not offered for the truth of the matter asserted.

Smith v. State, 968 So.2d 1054 (Fla. 5th DCA 2007):

Failure to register as a sex offender is a general intent crime, requiring knowledge of a duty to register.

Offense of failure to register as a sex offender does not require that defendant subjectively intended to violate the governing statute.

Giorgetti v. State, 27 Fla. L. Weekly D1663 (Fla. 4th DCA 2002): *on motion for rehearing*

Because violation of registration statutes is a felony, absent express contrary intent by legislature, court must presume that *mens rea* is an element of the crime.

Trial court erred in giving special instruction absolving state of burden to prove guilty knowledge or scienter or *mens rea* in prosecution for criminal violation of sexual offender registration statutes.

Question certified: Does *Chicone* apply to the crime created by the sexual offender registration statutes and thus compel the court to presume a scienter or *mens rea* requirement even though the statutory text fails to contain an explicit requirement of such guilty knowledge? -- Silence of defendant -- Error to admit testimony of arresting officer to the effect that when defendant was informed that he was being arrested for failing to register his new address, defendant did not respond.

Grumet v. State, 25 Fla. L. Weekly D2323 (Fla. 4th DCA September 27, 2000):

Requirement that sexual offenders register within 48 hours with DHSMV is required by statute, therefore defendant is charged with constructive notice of its application regardless of trial court's failure to orally pronounce condition at sentencing.

State's failure to cite applicable statute in violation of probation affidavit did not undermine validity of affidavit or violate defendant's' due process rights.

Defendant had actual notice that statute applied to his status as sexual offender and constructive notice of registration requirement, and acknowledged by his signature on sex offender registration form that he understood he had to comply with DHSMV registration requirement.

Quinn v. State, 751 So.2d 627 (Fla. 4th DCA 1999):

No merit to claim that failure to register a sex offender statute is facially unconstitutional because it fails to contain scienter or guilty knowledge element.

West v. State, 29 Fla. L. Weekly D2774 (Fla. 5th DCA 2004):

Claim that trial court erred by allowing defendant to plead to charge of failing to register when it was undisputed that he lacked knowledge that he was required to register not preserved where defendant did not reserve right to appeal legally dispositive issue upon entering nolo contendere plea.

MUNICIPAL ORDINANCES

Doe v. City of Palm Bay, 2015 WL 4366622 (Fla. Dist. Ct. App. July 17, 2015)

> City ordinance prohibiting sexual predators and registered sexual offenders from making deliveries to or performing work at, among other places, any residence, any designated private or public school, or any other place where children or vulnerable adults may reside or regularly congregate did not violate registered sex offender's procedural due process rights as result of fact that ordinance did not afford offender opportunity to prove that he did not pose danger to community; conviction for one of applicable enumerated crimes was determining factor, and offender had already been afforded procedural safeguards to contest underlying charge.
>
> Ordinance did not violate his equal protection rights, separation of powers doctrine, substantive due process, and other rights.
>
> City ordinance prohibiting sexual predators and registered sexual offenders from making deliveries to or performing work at, among other places, any residence, any designated private or public school, or any other place where children or vulnerable adults "may" reside or regularly congregate violated ex post facto clause; while employment restrictions were not historically considered to be punishment and ordinance could advance traditional goal of deterring future crimes, breadth of restriction on employment was excessive in relation to ordinance's stated purpose of public safety, given that use of word "may" was broad enough to apply to virtually every residence in city, as well as vast number of businesses, regardless of whether children or vulnerable adults were likely present.

Calderon v. State, 37 Fla. L. Weekly D1649 (Fla. 3rd DCA 2012):

> County ordinance prohibiting certain sex offenders from residing within 2,500 feet of any school did not conflict with state statute providing that persons on sexual offender probation may not reside within 1,000 feet of any school, and thus county ordinance was not void; by complying with ordinance, probationer would be in compliance with statute.
>
> Enforcement of county ordinance prohibiting certain sex offenders from residing within 2,500 feet of any school did not enhance penalty of sexual offender probation; ordinance was implicitly included in probation condition requiring probationer to live without violating the law.

Exile v. Miami-Dade County, 35 Fla. L. Weekly D (Fla. 3d DCA 2010):

Legislature has not clearly preempted local regulation of the field of sexual predators, so as to invoke the doctrine of "implied preemption."

Municipal code provision prohibiting convicted sexual offenders from residing within 2500 feet of a school did not conflict with less restrictive 1000-foot buffer zone provided by state law, and thus was not preempted by state law.

OFFENSES COMMITTED OUTSIDE EFFECTIVE DATES

Roberts v. State, 2018 WL 1613874, (Fla.App. 2 Dist., 2018):

Defendant was improperly designated a sexual predator when his offense was committed prior to October 1, 1993.

Bicking v. State, 2016 WL 5874420 (Fla. Dist. Ct. App. Oct. 7, 2016):

Court improperly declared defendant as a sexual predator when the date of his offense was before October 1, 1993.

Weckesser v. State, 2015 WL 8483822 (Fla. Dist. Ct. App. Dec. 11, 2015)

Sexual predator designation is improper where offense for which Appellant was convicted occurred prior to October 1, 1993, which is the effective date of Florida's Sexual Predator Act.

Lowery v. State, 2012 WL 3764501 (Fla.App. 1 Dist.)

Defendant convicted of crimes that allegedly took place over a 57-month period which included dates both before and after the Sexual Predator Act's effective date could not be designated a sexual predator absent evidence establishing that the crimes occurred on or after the effective date of the Act.

Dennis v. State, 34 Fla. L. Weekly D (Fla. 2d DCA 2009):

Defendant was charged by information with committing sexual offenses between January 1, 1993 and February 28, 1994 and the jury convicted him accordingly. The trial court was in error for designating him a sexual predator because the act did not take effect until October 1, 1993 and the date range charged preceded that date.

Anderson v. State, 25 Fla. L. Weekly D1205 (Fla. 2d DCA May 17, 2000):

Florida Sexual Predator Act does not apply to defendant whose underlying offense took place before statute's effective date of October 1, 1993.

Kelly v. State, 745 So.2d 1126 (Fla. 1st DCA 1999):

Error to designate defendant as sexual predator for offenses which occurred prior to October 1, 1993.

Burnsed v. State, 743 So.2d 139 (Fla. 2d DCA 1999):

Defendant was charged with sexual battery on a child and indecent assault for offenses occurring between July 1991 and July 1994. Defendant pled guilty, the state and defense stipulated that he was pleading guilty to offenses which occurred in July 1991. Since the stipulated offense occurred prior to October 1, 1993, the court erred in declaring the Defendant a sexual predator. The stipulation by the parties as to the date was binding.

Wade v. State, 728 So.2d 284 (Fla. 2d DCA 1999):

Error to designate defendant as sexual predator where offenses were committed prior to effective date of Sexual Predators Act.

Sexual predator designation is neither a sentence nor a punishment, and relief from designation would not be available under 3.800.

Burkett v. State, 731 So.2d 695 (Fla. 2d DCA 1998):

Sexual predator designation may be applied where portion of period when offenses were committed was outside period covered by statute and portion of period was inside period covered by statute.

Designation as sexual predator does not violate double jeopardy.

Sexual predator designation is a collateral consequence of plea and need not be orally announced.

No error in designating defendant as sexual predator in defendant's absence.

OUT-OF-STATE CONVICTION ISSUES

McGhee v. State, 2023 WL 2397642 (Fla.App. 1 Dist., 2023)

Defendant was charged with failure to register as a sexual offender based on his California conviction. The state introduced documents from

California to prove his conviction. Defendant argued that state failed to adequately connect him to the conviction in California. Apparently, there were no fingerprints. The court ruled the following documents were sufficient to establish that element of the offense.

> *The California documents contained McGhee's full name, a clear photograph, date of birth, state of birth, extensive tattoo descriptions, gender, race, and height. All of which matched McGhee. We find that a rational trier of fact, looking at the submitted California documents, could determine that McGhee was the same individual convicted in California.*

The court also noted that the determination of whether the elements of the California statute were similar to the Florida statutes was a matter of law to be determined by the court, not the jury.

Gosling v. State, 2016 WL 6992191 (Fla. 4th DCA Nov. 30, 2016)

Certificate alleged by State to contain details of defendant's out-of-state conviction for sexual offense was insufficient to prove that defendant was convicted of prior qualifying offense, as requirement for conviction for failure of a sex offender to register with the Department of Motor Vehicles (DMV), where certificate did not conform with rule governing forms related to judgment and sentence based on its lack of fingerprints and was not the whole record of out-of-state conviction.

This case demonstrates how difficult it is to prove such as case using out-of-state convictions. You really need the fingerprints.

Jershun v. State, 2015 WL 3988120 (Fla. Dist. Ct. App. July 1, 2015), reh'g denied (July 24, 2015)

Evidence was insufficient to prove defendant was convicted of a sexual offense in another jurisdiction similar to an in-state offense, within the meaning of statute requiring sexual offenders to register within state, despite documents from Florida Department of Law Enforcement (FDLE) purporting to state that Army found defendant guilty of receipt and possession of child pornography; documents stated defendant violated undefined articles of war and did not contain the elements of the violations,

documents were not certified, and testifying detective did not have firsthand knowledge of the documents' authenticity or completeness.

To determine if a foreign sexual offense conviction is “similar” to a state offense, subjecting an offender to registration requirements, the court looks only to the identity of the elements of the two crimes, not to their underlying facts.

Evidence was insufficient to support conclusion that defendant was required to register as a sexual offender with the Army, the out-of-state jurisdiction that allegedly designated defendant a sexual offender for receipt and possession of child pornography, and therefore did not support conclusion that defendant was a sexual offender subject to registration requirements within state; even though defendant admitted he was required to register and allegedly registered for six years, defendant maintained he was required to register for only five years, defendant made admission after trial court denied his motion for judgment of acquittal, no documentary evidence established defendant was ordered to register, and no fingerprints were compared to identify defendant as the person who registered.

When the State must establish the existence of a prior conviction to prove an essential element of an offense, merely introducing a judgment, which shows identity between the name on the prior judgment and the name of the defendant, is insufficient; instead, the State must present affirmative evidence that the defendant and the person named on the prior judgment are the same person.

Evidence was insufficient to prove defendant was designated as a sexual predator or offender in another jurisdiction, within the meaning of statute requiring sexual offenders to register within state, despite documents from Florida Department of Law Enforcement (FDLE) purporting to state that Army found defendant guilty of receipt and possession of child pornography and allegation that defendant had registered as a sexual offender for six years; documents contained no designation, and defendant's alleged registration did not establish designation. West's F.S.A. § 943.0435(1)(a)(1)(b)

Documents from Florida Department of Law Enforcement (FDLE) purporting to state that Army found defendant guilty of receipt and possession of child pornography were unauthenticated hearsay with respect to defendant's trial relating to failure to register as a sexual offender; authentication affidavit from state employee did not apply to the Army documents within the group of documents, and the Army documents were not prepared by any agency or office of the state so as to render them public records under seal.

Montgomery v. State, 2015 WL 1666740 (Fla.App. 4 Dist.)):

Pennsylvania sexual battery statute was not sufficiently similar to F.S. 794.0114(4) to require a defendant to register as a sexual predator in Florida.

State v. Burgess, 168 So. 3d 316 (Fla. Dist. Ct. App. 2015)

Writ of mandamus was not warranted to compel trial court to designate defendant as a sexual predator without hearing; State used out-of-state case number rather than commencing new case by filing petition so that a hearing could be held for determining whether out-of-state conviction met sexual predator criteria.

Johnson v. State, 80 So.3d 1137 (Fla. 1st DCA 2012):

In ruling that the defendant was improperly designated a sexual predator, the appellate court stated,

The trial court's order does not specify the offense found by the court to qualify Appellant for designation as a sexual predator; the order simply contains a list of the Florida statutes that could serve as the basis for a sexual predator designation, many of which have no relation to Appellant's offenses. Moreover, to the extent the sexual predator designation was implicitly based on the federal offenses referenced in the petition, the order does not include the requisite finding that the offenses are similar to a Florida offense listed in section 775.21(4)(a). It is the responsibility of the trial court, not this court, to make that determination in the first instance.

Gosling v. State, 2012 WL 3964818 (Fla.App. 4 Dist.) *on rehearing*

Evidence at trial for failure of a sex offender to report to the Department of Motor Vehicles (DMV) within 48 hours of a change in address was insufficient to establish that defendant's New York conviction for "Sexual Abuse 1st" rendered him a "sexual offender" under the registration statute; there was no evidence defendant continued to be on probation, community control, or parole, and there was no evidence that the New York courts had designated defendant as a "sexual predator," a "sexually violent predator," or some other sex offender designation.

A defendant who commits a sex offense in another jurisdiction will be treated as a "sexual offender" in Florida, for purposes of crime of to report

to the Department of Motor Vehicles (DMV) within forty-eight hours of a change in address, if he maintains a residence in Florida and was "designated" a "sexual offender" by the out-of-state court.

Discussion: The appellate court ruled that when an out-of-state-offender is charged on the theory that he committed a similar offense in another jurisdiction, he can be convicted by comparing the elements of the offenses. If, however, we are charging him on the theory that he must register here simply because he had to register in the other state, we must show that the out-of-state court actually *designated* him a sexual offender.

Fike v. State, 2011 WL 2161938 (Fla. 5th DCA 2011)

Evidence was insufficient to support designation of defendant as a sexual predator; defendant's prior conviction in Michigan for assault with intent to commit criminal sexual conduct involving penetration was not similar to the lewd and lascivious offenses since the Michigan offense did not require proof that the victim was under 16 years of age.

Turner v. State, 31 Fla. L. Weekly D2332 (Fla. 5th DCA 2006):

Defendant adjudicated guilty in Minnesota of offense comparable to Florida's lewd and lascivious battery statute and who was required to register as sex offender in Minnesota was required to register as sex offender in Florida.

Statute extending scope of sex offenders subject to registration requirement to those designated as such in other state and subject to registration in that state did not violate equal protection, but was rationally related to legislature's intent to include Florida residents who had been designated sex offenders by other state.

Discussion: The defendant was adjudicated delinquent for committing the equivalent of a lewd battery in Minnesota. Under Minnesota law, juvenile adjudications require registration. In Florida they don't. Even though the defendant would not be required to register if his conviction was in Florida, he still has to register by virtue of his requirements in Minnesota. Keep in mind, that in this situation, simply introducing his certified judgments would not suffice. You would have to introduce proof of his registration requirement instead.

McCoy v. State, 31 Fla. L. Weekly D2226 (Fla. 4th DCA 2006):

Defendant who had been convicted of first-degree sexual assault in Colorado was required to register with driver's license office, under statute requiring sex offenders to register within 48 hours of changing address, even though he was not designated a sexually violent predator; if defendant lived in Colorado, he would have been required to register there, and defendant was not designated a sexually violent predator in Colorado only because his conviction predated the effective date of the sexually violent predator statute.

PRIOR CONVICTIONS – ADMISSIBILITY OF

Crosby v. State, 2017 WL 2729867 (Fla.App. 5 Dist., 2017)

Evidence of prior convictions to establish knowledge of reporting requirements in cases such as this has no probative value when such knowledge is undisputed.

Defendant testified that he knew his registration requirements, but a Sheriff Deputy misadvised him about when he had to re-register. The court ruled that since knowledge of reporting requirements was not a disputed issue, the State should not have introduced the fact that the defendant had been convicted for failure to register twice before.

Mosley v. State, 2016 WL 3030835 (Fla. Dist. Ct. App. May 27, 2016)

The court rejected defendant's assertion that introduction of multiple qualifying sex offenses in failure to register case violated the probative versus prejudice test because only one offense was necessary to trigger registration requirement. The court responded as follows:

Because the state was required to establish at least one qualifying sexual assault conviction and the jury may believe or reject any evidence put before it, the state was entirely within its right to put forth evidence to prove every conviction that brought the appellant within the purview of section 943.043. Therefore, it certainly was not an abuse of discretion for the trial court to allow the introduction of the "crime and time" report after the extraneous and unnecessary parts were redacted.

Horton v. State, 31 Fla. L. Weekly D3147 (Fla. 2d DCA 2006):

Probative value of evidence of defendant's prior conviction for failure of a sex offender to report a change of address was sufficiently outweighed by

danger of unfair prejudice in prosecution for same offense; while state was required to show that defendant had notice of the duty to register, notice element was not a disputed issue at trial because defendant was not asserting, and could not assert lack of notice as a defense, and it was undisputed that state had available other less prejudicial evidence that could have satisfied the notice element.

Discussion: The opinion does not discuss what defense/excuse the defendant actually used in the case, but that would have been helpful to put this ruling in perspective. For instance, if the defendant simply said he forgot to register and it was an honest mistake, his prior conviction for the same offense may have been relevant to rebut this claim. The lesson of this case is that we cannot use a prior conviction for failing to register to prove the defendant's knowledge when it is an undisputed element. If you want to enter such evidence, try to find a different relevance and make sure the judge analyzes it pursuant to 90.403 probative vs. prejudice analysis.

PROPER COURT TO CHALLENGE DESIGNATION

Adams v. State, 37 So.3d 953 (Fla. 4th DCA 2010)

Petitioner who was convicted of child molestation in another state, which later agreed to lift the requirement that he register as a sex offender, was not entitled to litigate his Florida sex offender registration under statute pertaining to removal of registration requirement, where petitioner had not exhausted his administrative remedies under statutory provisions pertaining to offenders convicted in other states by petitioning the Department of Law Enforcement or by seeking mandamus relief.

Finally, on remand this case should be transferred to the criminal court as the statute at issue is within Title XLVII Criminal Corrections and Procedure.

Saintelien v. State, 33 Fla. L. Weekly S587 (Fla. 4th DCA 2008):

A defendant may seek correction of an allegedly erroneous sexual predator designation by filing a motion to correct an illegal sentence in criminal court, in cases where it is apparent from the face of the record that the defendant did not meet the criteria for designation as a sexual predator; abrogating Boyer v. State, 946 So.2d 75.

Defendant met the criteria for designation as a sexual predator, and thus challenge to his sexual predator designation could not be raised in motion to correct an illegal sentence filed in criminal court.

Boyer v. State, 32 Fla. L. Weekly D122 (Fla. 1st DCA 2006): *abrogated by Saintenlien*

> Defendant may not challenge designation as sexual predator in post conviction motion, but must instead challenge designation in separate civil suit seeking injunctive or declaratory relief.
>
> Sexual predator designation is neither a punishment nor a sentence, and does not render a sentence illegal as term in used in rule 3.800(a).
>
> *Conflict certified.*

Saintelien v. State, 31 Fla. L. Weekly D2272 (Fla. 4th DCA 2006):

> Challenge to sexual predator designation not properly raised in post conviction motion and should be raised in civil proceeding. *Conflict certified (conflict with 2nd and 5th)*

Mortimer v. State, 31 Fla. L. Weekly D856 (Fla. 4th DCA 2006):

> Defendant's single-subject attack on statutory registration and reporting requirements for sexual offenders did not fit within the identified uses for habeas corpus relief, thus precluding defendant's habeas petition, where defendant was not in custody and failed to show that he was being illegally restrained of his liberty or that he had no other adequate legal remedy.
>
> Habeas corpus does not lie where the petitioner has other adequate remedies at law.

Besong v. State, 31 Fla. L. Weekly D776 (Fla. 2d DCA 2006):

> *King v. State* in which District Court of Appeal receded from *Angell v. State* in holding that criminal procedural rule governing motions to correct, reduce, or modify sentences was available to correct an erroneous sexual predator designation applied retroactively to defendant's case that was pending direct review and not yet final.

King v. State, 30 Fla. L. Weekly D2297 (Fla. 2d DCA 2005):

> A sexual predator designation (1) may be imposed or modified after sentencing without regard to time limits established in rule regarding reduction and modification of sentences; (2) may be directly appealed as a portion of an unlawful or illegal sentence; (3) may be directly appealed

under rule governing appeals of orders entered after final judgment if it is entered after the time to appeal the judgment and sentence has expired; (4) may be challenged under rule governing motions to correct sentencing errors in order to preserve issue for direct appeal; and (5) may be challenged like a sentencing issue by postconviction motions to correct, vacate or set aside sentence.

Jackson v. State, 30 Fla. L. Weekly D518 (Fla. 2d DCA 2005):

Motion court's failure to address merits of adjudicated sexual predator's motion for declaratory judgment, challenging his adjudication, based upon fact that petitioner had already raised identical issue in petition for post-conviction relief, was abuse of discretion, where appellate affirmance of denial of post-conviction relief was without prejudice to his right to seek further civil relief.

Ealum v. State, 31 Fla. L. Weekly D3104 (Fla. 1st DCA 2006):

Absence of evidence that defendant, who pled nolo contendere to three counts of the second-degree felony of lewd or lascivious exhibition, had a prior conviction for one of the crimes specified in sexual predator statute precluded defendant's designation as a sexual predator, even though defendant did not raise the issue in the trial court; defendant had no opportunity to raise the issue, since order of designation was entered same day State filed motion seeking the designation, and trial court never made a determination of whether defendant had prior qualifying convictions.

A defendant should not file any civil motion or proceeding to challenge a sexual predator designation.

Kidd v. State, 28 Fla. L. Weekly D2290 (Fla. 5th DCA 2003):

Although defense counsel failed to join or adopt defendant's pro se motion in which this issue was raised., or to file motion on his own, appellate court declines to treat pro se motion, which was filed while defendant was represented by counsel, as a legal nullity *because how a defendant seeking to challenge sexual predator designation should proceed has yet to be clarified under rules or case law.*

Discussion: The primary point of interest in this case is the court's acknowledgement that it is not clear whether a defendant needs to challenge a predator designation in civil or criminal court.

Sanders v. State, 28 Fla. L. Weekly D1927 (Fla. 5th DCA 2003):

Record insufficient for court to make determination of whether defendant was illegally designated as sexual predator.

Although issue has never been considered on merits, in part for reasons that relate to a quirk of law and in part due to defendant's failure to appeal after his original sentencing, if sexual predator designation is not legal, there may be a procedural avenue available to defendant, such as a belated appeal.

Brady v. State, 27 Fla. L. Weekly D1338 (Fla. 2d DCA 2002):

An order designating a defendant a sexual predator is subject to direct appeal.

The trial court erred because a civil designation as a sexual predator was not authorized by section 775.21(4)(c).

Smeltz v. State, 27 Fla. L. Weekly D202 (Fla. 2d DCA 2002):

Where trial court granted defendant's petition for relief from designation as sexual predator, and struck the designation, court was without jurisdiction to thereafter deny the petition on the procedural ground that a sexual predator designation is neither a sentence nor a punishment and the rules of criminal procedure do not apply to it.

Trial court had jurisdiction pursuant to civil rule 1.540 to entertain defendant's petition, and when court rendered and order granting the requested relief its jurisdiction over the matter terminated.

Discussion: The defendant was erroneously designated a sexual predator when he was actually a sexual offender. The court indicates that a challenge to this designation is technically a civil matter to be brought pursuant to Civil Rule of Procedure 1.540. The court noted, however, that the criminal judge could invoke jurisdiction under the civil rule.

Jackson v. State, 801 So.2d 212 (Fla. 2d DCA 2001):

Claim that trial court erred in designating defendant as sexual predator because he did not qualify for such treatment due to date of prior offense may not be raised pursuant to either rule 3.800 or 3.850.

Denial of relief affirmed without prejudice to right to pursue any available civil remedies.

Coblentz v. State, 775 So.2d 359 (Fla. 2d DCA 2000):

> Where defendant entered into voluntary nolo contendere plea in criminal case, and his sentence was lawful, defendant has no basis for appeal in his criminal case from order declaring defendant to be a sexual predator.
>
> Defendant should seek civil remedy for his claim that he does not qualify as sexual predator.

Wade v. State, 728 So.2d 284 (Fla. 2d DCA 1999):

> Error to designate defendant as sexual predator where offenses were committed prior to effective date of Sexual Predators Act.
>
> Sexual predator designation is neither a sentence nor a punishment, and relief from designation would not be available under 3.800.

Clark v. State, 720 So.2d 1097 (Fla. 2d DCA 1998):

> Trial court had jurisdiction to hear motion for post-conviction relief attacking conviction of capital sexual battery on ground of ineffective assistance of counsel although appeal was pending from order designating defendant as sexual predator. Error to deny motion on ground of lack of jurisdiction.

Thomas v. State, 716 So.2d 789 (Fla. 4th DCA 1997): Julian

> Order finding defendant to be sexual predator is appealable as order entered after "finding of guilt," pursuant to rule 9.140(b)(1)(C).

Downs v. State, 700 So.2d 789 (Fla. 2d DCA 1997):

> Orders entered pursuant to Sexual Predators Act are subject to direct appeal because such orders are encompassed by Rule 9.140(b)(1)(C).
>
> Appeal challenging order designating defendant as sexual predator dismissed as untimely, because defendant failed to timely file notice of appeal directed to postjudgment order.
>
> Motion to supplement record of appeal from judgment and sentence with transcript of hearing to declare defendant a sexual predator not treated as notice of appeal because it was filed more than 30 days after order was rendered.

REMOVAL FROM REGISTRY

Hurtado v. State, 2021 WL 5499524 (Fla.App. 2 Dist., 2021)

> Trial court has discretion to reject defendant's request to be removed from the sexual offender registry pursuant to the Romeo & Juliet provision, but the court must provide written reasons for the refusal.
>
> The Romeo & Juliet provision used to require the motion be presented before sentencing, but the statute was later amended to allow for a motion at any time. Defendant could take advantage of this provision even though his crime occurred before the revision.

Chavez v. State, 2020 WL 3408508 (Fla. 1st DCA June 22, 2020)

> Defendant moved to be taken off the sexual offender registration list pursuant to F.S. 943. 04354 (Romeo and Juliet law). Since his convictions for soliciting and traveling to meet a minor are not listed as qualifying offenses for removal, the trial court was correct in denying his motion.

Wromas v. State, 2018 WL 844595 (Fla.App. 3 Dist., 2018):

> Although defendant qualified for removal from the sex offender registry pursuant to F.S. 943.04354, judge had discretion to deny the motion based on defendant's history of violent crimes and other factors.

Vega v. State, 2016 WL 6609763 (Fla. 3d DCA Nov. 9, 2016)

> Defendant was not entitled to relief from sentence for lewd and lascivious acts on child who was 14 years old at time, based on claim that guilty plea was involuntary due to retroactive application of sex offender requirements, despite evidence that defendant who had been dating child at time, that ultimately married her with parents' consent, that he had three children with her, and that he had remained in loving relationship with her for almost 20 years at time of motion, where motion was filed more than one year after judgment of conviction became final.
>
> A trial court may, within its discretion, deny a petition for removal of a sexual offender designation because of the defendant's criminal record.

Matos v. State, 2015 WL 9491858 (Fla.App. 5 Dist.,2015)

Court has discretion to deny removal of sexual offender designation (Romeo and Juliet) even if the elements for doing so have been met.

It was improper to use presentence investigation report to establish facts at the hearing.

State v. Caragol, 38 Fla. L. Weekly D1905 (Fla. 5th DCA 2013):

Trial court's decision granting sex offender's petition to be relieved of requirement that he register as a sex offender on basis that trial court was not persuaded that circumstances of sex offender's case, which involved his sexual relationship when he was between 18 and 19 years of age with victim, who was 13 years of age at time of their relationship, were best served by requiring sex offender to function as a registered sex offender, constituted a departure from the essential requirements of law that resulted in a miscarriage of justice, as sex offender registration law required that in order for a sex offender to be relieved of the registration requirements, he had to be not more than four years older than the victim at time of offenses, which was not the case for sex offender.

Horton v. State, 2013 WL 6223408 (Fla.App. 2 Dist.)

Trial court properly dismissed defendant's petition to remove his sexual offender registration requirements pursuant to Romeo and Juliet law because defendant failed to allege that removal of the registration requirement would not conflict with federal law.

Matos v. State, 2013 WL 1775547 (Fla.App. 5 Dist.):

A defendant convicted of committing lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age is automatically designated a sexual offender and required to comply with the registration requirements of the statute; however, defendant is permitted by statute to petition for removal of the registration requirement if he satisfies the statutory criteria.

Sex offender who had been convicted of lewd or lascivious assault upon a child and who sought removal of requirement that he register as a sex offender was entitled to evidentiary hearing on issue of whether his sexual conduct with victim had been consensual, such that his removal from registration requirement would violate Adam Walsh Act, where finding that his sexual conduct with victim had not been consensual was based on the presentence investigation (PSI) report, which was hearsay and lacked

corroborating evidence. Sex Offender Registration and Notification Act, § 111(5)(c), 42 U.S.C.A. § 16911(5)(c).

Martinez v. State, 38 Fla. L. Weekly D575 (Fla. 2d DCA 2013)

Trial counsel rendered ineffective assistance of counsel by misreading sentencing statute to mean that defendant, for lewd or lascivious battery conviction, did not qualify for removal of sex offender registration requirement under Romeo and Juliet statute and informing trial court the same; defendant, who was not more than four years older than victim who herself was not more than 17 years of age at time of offense, was and always had been eligible for consideration for removal of requirement that he register as a sexual offender.

State v. Whitt, 2012 WL 3870519 (Fla.App. 5 Dist.)

The trial court lacked postconviction jurisdiction to consider defendant's motion to remove his name from the Florida Department of Law Enforcement (FDLE) Sexual Offender Registry; the requirement that defendant register as a sex offender was unrelated to his sentence and was a collateral consequence of his judgment and sentence, and because the sexual offender designation was not part of the plea or sentence, the trial court did not have postconviction jurisdiction to consider the matter.

Dukharan v. State, 37 Fla. L. Weekly D2042 (Fla. 2d DCA 2012)

Defendant was not entitled to removal of the sentencing requirement that he register as a sexual offender; statute prohibited removal of the sexual offender registration requirement in the offender was not more than four years older than the victim, who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation, and defendant was more than four years older than his 15 year old victim.

Clark v. State, 37 Fla. L. Weekly D2002 (Fla. 2d DCA 2012.)

Defendant appealed an order denying his postconviction petition to remove the requirement that he register as a sex offender. In denying his claim, the appellate court ruled that the motion should have taken place prior to sentencing. Once the defendant was sentenced, it was too late.

State v. Welch, 37 Fla. L. Weekly D1620 (Fla. 2d DCA 2012):

State seeking common law certiorari review of trial court's grant of petition to remove sex offender registration requirement established jurisdictional

requirements of material harm and the lack of a remedy on appeal, where State had no remedy by appeal, State suffered material harm when a sexual offender was improperly relieved of registration requirement, and correct interpretation of governing statute was necessary to ensure uniform application of the law.

Offender who was four years, two months, and twenty days older than his girlfriend at the time she became pregnant was "more than 4 years older than the victim," and thus was not eligible for removal of sex offender registration requirement following guilty plea to lewd or lascivious battery on a female under sixteen years of age.

State v. Samuels, 2011 WL 6843011 (Fla.App. 5 Dist.):

Defendant convicted of committing a lewd and lascivious battery on a child 12 years of age or older but less than 16 years of age was not eligible, under Romeo and Juliet Law, for removal of sentencing requirement that he register as a sex offender, where difference in age between defendant and victim was four years, one month, and 21 days.

State v. Marcel, 2011 WL 3820700 (Fla.App. 3 Dist.)

Eighteen-year-old defendant who was convicted of having sex with a fourteen-year old victim sought to have his sex offender registration status removed under the Romeo and Juliet law. One of the criteria for relief is that the defendant be "not more than four years older than the victim of the violation who was fourteen years of age or older but not more than seventeen years of age at the time the person committed the violation." The defendant asked the court to interpret "not more than four years older" to mean that he was not yet five years older. The appellate court used the birthday rule and said since the defendant was four years and three months older than the victim; he was more than four years older and cannot have his registration status removed.

Courson v. State, 35 Fla. L. Weekly D87 (Fla. 1st DCA 2009):

Defendant who was charged with lewd and lascivious battery of a victim over 12 but under 16 years of age against two separate victims in two separate cases, but who pleaded guilty to the lesser included offenses of lewd or lascivious conduct in both cases, did not qualify for sexual offender registration exemption under "Romeo and Juliet Law," even though registration may have been an unintended consequence of joint disposition of defendant's separate cases.

The District Court of Appeal is without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications; to do so would be an abrogation of legislative power.

Offenders with multiple sex crime convictions are ineligible for the "Romeo and Juliet" exemption from the sexual offender registration requirement.

Simmons v. State**,** 35 Fla. L. Weekly D98 (Fla. 1st DCA 2009):

Trial court erroneously denied defendant's petition to remove the requirement that he register as sexual offender because he had been adjudicated guilty of violating law prohibiting lewd or lascivious offenses committed upon or in the presence of persons less than 16 and court did not consider the other requirements of the statute, providing that defendant convicted of violating lewd and lascivious law, as well as other enumerated offenses, was automatically designated a sexual offender and required to comply with registration requirements, but defendant could petition sentencing court for removal from sex offender registry if he satisfied certain criteria.

Miller v. State, 34 Fla. L. Weekly D1606 (Fla. 5th DCA 2009):

Because a consensual act is a prerequisite for removal from the sex offender registry and Miller was unable to persuade the trial court that the offense of which he was convicted was consensual, he is not entitled to removal under section 943.04354, Florida Statutes.

Discussion: The 18-year-old defendant was convicted for lewd battery against a 15-year-old victim. He moved to remove his sexual offender designation pursuant to the Romeo and Juliet Act. In order to comply with Adam Walsh Act, the court must find that the sexual act was consensual before removal of the designation. The defendant argued that the court should rely on the elements of F.S. 800.04 without considering the underlying facts. The court disagreed and considered testimony on the consent issue. The appellate court ruled that the trial court was correct.

Hughes v. State, 967 So.2d 968 (4th DCA 2007):

"Petitioner seeks mandamus relief to require the trial judge to remove the designation of petitioner as a sexual offender as the judge originally ordered at sentencing. Since petitioner was convicted of an offense for which sexual offender designation is mandatory, the trial court had no authority to exempt a qualifying person from such designation. § 775.24, Fla. Stat. (2003).

Mandamus relief is available only to require performance of legally authorized acts and thus cannot be invoked in this case."

Pisarri v. State, 724 So.2d 635 (Fla. 5th DCA 1999):

Where trial court entered written order declaring defendant a sexual predator, FDLE was required to place defendant's name on its list of sexual predators. If trial court erroneously found defendant to be a sexual predator, appeal from that order would have been appropriate remedy rather than mandamus petition to compel FDLE to remove name from list.

Fact that 13 months intervened between sentencing and court's determination that defendant was sexual predator would not, in and of itself, make that finding erroneous.

RES JUDICATA

Ruiz v. State, 2022 WL 10733432 (Fla.App. 3 Dist., 2022)

Defense of res judicata did not bar trial court from designating defendant as a sexual predator after completion of his sentence for underlying offense, first-degree felony of lewd and lascivious molestation of a child less than twelve years of age by a defendant eighteen years of age or older, even though State failed to seek the designation at the time of his sentencing; because State brought motion in the original criminal case, not in a subsequent action, defense of res judicata was not applicable.

RESIDENCY RESTRICTIONS

U.S. v. Ogle, 2013 WL 5920820, at *1 (M.D.Fla.,2013)

Defendant lived in a house in 1998. In 2000, a child care facility was built within 1000 feet of his home. He committed a child pornography offense and went to prison from 2010 to 2013. He had a probationary sentence after his prison sentence. The court ruled the defendant could move back into his residence because he lived there before the child care facility was built.

STATUTE OF LIMITATIONS

Lieble v. State, 933 So.2d 119 (Fla. 5th DCA 206):

Crime of failure to register as sex offender was continuing in nature, and thus, three-year statute of limitations period began when police learned of defendant's violation, rather than when defendant obtained driver's license in state; express statutory language created continuing duty to register, which evinced intent to treat failure to register as continuing offense, legislature expressly recognized that sex offenders presented ongoing danger to society, and failure to register met traditional definition of continuing crime, which was commonly defined as offense marked by continuing duty in defendant to do an act which he fails to do.

SUFFICIENT EVIDENCE AT TRIAL

Parks v. State, 2012 WL 3870610 (Fla.App. 1 Dist.)

Evidence was sufficient to support indictment of defendant, a sex offender, for failing to notify authorities that he had changed or vacated his permanent address; although defendant listed a shelter as his permanent address when he left prison, shelter officials stated that defendant had only stayed at the shelter for one night following his release, and no employees or residents of the shelter knew of defendant's whereabouts.

Andrews v. State, 2011 WL 3558148 (Fla.App. 1 Dist.):

State provided sufficient evidence to prove registered sexual offender was using his girlfriend’s apartment as a temporary address: witnesses testified that his vehicles was parked there regularly, and the defendant told them he lived there.

Convictions on two counts of failure to register based upon failing to register at two three-month intervals did not violate double jeopardy.

Two consecutive ten-year sentences did not constitute cruel and unusual punishment.

WITHHELD ADJUDICATIONS

Price v. State, 43 So.3d 854 (Fla. 5th DCA 2010):

Defendant had been convicted of a sex offense, for the purpose of the sex offender registry, even though he pled nolo contendere to the prior offense and adjudication was withheld; the statutory definition of convicted, both at the time defendant's probation for his prior offense ended and at the time he

was charged with failure of a sex offender to properly register, included the entry of a plea of nolo contendere where adjudication was withheld.

Derosa v. Tunnel, 33 Fla. L. Weekly D1978 (Fla. 4th DCA 2008)

Defendant who entered plea to two counts of lewd and lascivious conduct and had formal adjudication of conviction withheld was required to register as a sexual offender, despite defendant's contention that exception to the registration requirement for sexual offenders whose civil rights have been restored applied to him because his civil rights were never lost due to the withholding of adjudication; registration statute explicitly included sexual offenders as to whom adjudication was withheld, while excluding only those who were actively pardon.

Carter v. State, 31 Fla. L. Weekly D2333 (Fla. 5th DCA 2006):

Individual who pled nolo contendere to charges of sexual assault of a child in Texas qualified as a "sexual offender," under statute defining sexual offenders for purposes of registration requirement, although adjudication was withheld; "convicted" was defined to mean determination of guilt, regardless of whether adjudication was withheld, offense was virtually identical to the charge of sexual battery, and he was released from his sanction after applying for early termination of his probation.

K.J.F. v. State, 44 So.3d 1204 (Fla. 1st DCA 2010):

Juvenile who had pled guilty to sexual battery, lewd or lascivious molestation, lewd or lascivious exhibition, and false imprisonment, but for whom trial court had withheld adjudication of delinquency and placed him on probation, was not a "sexual offender" who was required to register as such, as statute governing registration of juvenile sexual offenders defined "sexual offender," in part, as a juvenile who had been adjudicated delinquent, statute addressing reporting requirements of adults and juveniles defined the word "convicted" as including an adjudication of delinquency of a juvenile, but neither statute contained any mention of a withhold of adjudication in any context, and, thus, legislature did not envision a withhold of adjudication as a "conviction" or as a basis for designating a juvenile a sexual offender.

OTHER

State v. Crose, 2024 WL 292231 (Fla.App. 2 Dist., 2024):

This case is an example of how extremely complex and dysfunctional the sex offender registration statute has become. The court began its opinion by stating,

> *Whether a sex offender has completed his prior criminal sanction would seem to be a relatively simple inquiry. But a panel decision interpreting section 943.0435(1)'s definition of "the sanction," followed by a legislative amendment in response to that decision, followed by a subsequent panel decision responding to that amendment, complicates the matter. We proceed en banc today for two purposes: to resolve our conflicting panel decisions and, more broadly, to address the facet of common law that precipitated that conflict.*

In short, the defendant was sentenced to prison followed by one year probation for online solicitation. After he completed his prison term, but while he was still on probation, he got arrested and charged for online solicitation again. Since he had not registered the MeetMe account he used to commit the offense, he was charged with failing to register his electronic identifier with FDLE. The defendant argued that since he had completed the probation portion of his sentence, he was not required to register his identifier. The State countered that the legislature amended the statute to preclude that argument in 2021. The defendant countered that his crime was committed before the legislature amended the statute and clarified the legislative intent. The court then went through a complex series of legal gymnastics and concluded the trial court properly dismissed the charge. The opinion has multiple concurrences, and some issues were certified to the Florida Supreme Court. If this general issue arises in the future, please see this case for details. *See State v. James and Hull v. State below.*

Hill v. State, 2022 WL 17332212 (Fla.App. 2 Dist., 2022)

Registered sex offender was charged with four counts of failing to register based on four vehicles he owned at the time of his re-registration. The relevant statute compels the offender to register "all vehicles owned."

The court went through an interesting discussion of statutory construction and concluded the defendant could only be charged with one count. In its conclusion, the court stated,

> *We conclude that the plain language of sections 775.21(2)(p) and 943.0435, when read together, is ambiguous as to whether the legislature intended for a sex offender to be charged with one or multiple counts of failure to properly register as a sex offender (vehicle registration) when the offender fails to register more than one applicable vehicle during a single reporting event. And the rule of lenity requires us "to construe [section 943.0435] in the manner most favorable to" Hill. Bell, 122 So. 3d at 961. Thus we reverse three of the four convictions for failure to properly register as a sex offender (vehicle registration) and remand for resentencing.*

Hull v. State, 2022 WL 2080238 (Fla.App. 2 Dist., 2022)

A person who has failed to pay court costs is not relieved of the requirement to register and report as a sexual offender.

Note: This case abrogates *State v. James*, 298 So. 3d 90 (Fla. 2d DCA 2020). In James, the court ruled the defendant did not have to register as a sexual offender because he had not paid his fine and thus, was still serving a sanction for his crime. In making that ruling, the James court recognized it was a result most likely not intended by the legislature and commented that the legislature may want to go back and fix the law. In 2021, the legislature amended the law and made it clear that failure to pay a fine was not a valid reason not to register. The Hull court relied on the legislatures amendment to clarify the statutory intent and applied it to the case at bar.

Manetta v. State, 2022 WL 301714 (Fla.App. 3 Dist., 2022):

Defendant received a sentence of prison followed by probation. He did not register as a sex offender within 48 hours of his release from prison, so he was charged with failure to register. He argues that he did not need to begin registering until his probation had been completed. The appellate court rejected his argument.

Note: Although this brief opinion does not give specific details, it is interesting to note that he did not register within 48 hours of his release from prison pursuant to F.S. 943.0435. Offenders under the supervision of the Department of Corrections are covered by F.S. 944.607. The opinion never refers to this statute. This statute says they must report to their probation officer and DOC subsequently submits this information to FDLE. Pursuant to 944.607, the only times the supervised offender must report to the Sheriff

is when he registers his vehicle registration and during his re-registration period. He must also update his DL with DHSMV.

For example, F.S. 943.0435(2), which covers initial registration, specifically excludes offenders on probation.

> (2) Upon initial registration, a sexual offender shall:
> (a) Report in person at the sheriff's office:
> 1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:
> a. Establishing permanent, temporary, or transient residence in this state; or
> b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or
> 2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section *if the* ***offender 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.***

F.S. 944.607 states,

> (4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated **shall register with the Department of Corrections within 3 business days after sentencing** for a registrable offense and otherwise provide information as required by this subsection.

It is possible that offenders must comply with both statutes, but the provisions of (2)(a)(2) seem to refute that assertion.

In conclusion, the defendant challenged his case under the wrong theory.

Carnes v. State, 2021 WL 1706323 (Fla.App. 2 Dist., 2021)

Defendant convicted of failure to register as a sex offender scored 6.5 years FSP. The State asked for 8 years and the court sentenced him to 5 years. When asked by the prosecutor to clarify his reasoning, the court stated, "Essentially, I'm saying this case isn't worth eight years." The appellate court said that was not a valid grounds for departure and remanded the case.

State v. James, 2020 WL 1870339 (Fla. 2d DCA Apr. 15, 2020) *abrogated by Hull v. State*

Defendant was convicted of attempted lewd molestation and sentenced to 15 years prison plus a $10,000 fine. After his release, he failed to properly register as a sex offender. The trial court dismissed the failure to register charges because the defendant had not yet paid his $10,000 fine. The court reached this conclusion by analyzing the following portion of the statue concerning who qualifies to register:

> *Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), 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.*

Since he had not yet been released from the fine, he did not qualify to register. The appellate court agreed and said this apparently absurd result should be taken up with the legislature.

Brinson v. State, 2020 WL 808276, at *3 (Fla. Dist. Ct. App. Feb. 19, 2020)

Defendant argued that he was improperly designated a sexual offender on a false imprisonment charge because the court never made a written finding that there was a sexual component to the crime. In rejecting the defendant's argument, the court noted:

> *There is no requirement for a trial court designation or written findings to activate the sexual offender status. To deactivate the automatically assigned sexual offender status, a defendant must challenge the assignment by asserting a lack of sexual predicate. If the State does not concede the absence of a sexual component, the defendant must carry the burden of proof for that deactivation. Here, Brinson failed to do so.*

The court also ruled that the trial court did not have to make a specific finding designating defendant a sexual offender. The status automatically attaches upon conviction of an enumerated offense.

State v. Hernandez, 2019 WL 4047529, (Fla.App. 3 Dist., 2019)

Defendant was convicted of a sex offense in 1993 and her sentence expired after October 1, 1997. She was never informed of her obligation to register. In 2018, FDLE learned of the mistake and advised her she had to start registering. Defendant moved to delete the registration requirement based on laches, a form of equitable relief. The trial judge granted the motion, but the appellate court ruled that when the language of the statue is clear, no equitable relief may be granted.

State v. Brena, 2019 WL 4047530, (Fla.App. 3 Dist., 2019)

Defendant was convicted of a sex offense in 1993 and her sentenced expired after October 1, 1997. He was erroneously deleted from the FDLE database. In 2018, FDLE learned of the mistake and advised him he had to start registering. Defendant moved to delete the registration requirement based on laches, a form of equitable relief. The trial judge granted the motion, but the appellate court ruled that when the language of the statue is clear, no equitable relief may be granted.

Williams v. State, 2011 WL 4949931 (Fla.App. 3 Dist.)

Florida Rule of Criminal Procedure 3.040, which extends a deadline where the deadline falls on a Saturday, Sunday, or legal holiday, is not applicable to the reporting requirements set forth in section 954.0435(14)(b), as the reporting requirement does not require a computation of time, but instead requires the defendant to "reregister each year during the month of the sexual offender's birthday and every third month thereafter."

State v. Michels, 36 Fla. L. Weekly D445 (Fla. 4th DCA 2011):

Trial court that adjudicated defendant guilty of failure by a sex offender to properly register could not impose a downward departure sentence of one day, with credit for one day served, on the statutory ground that the offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse; trial court did not find that the incident was isolated, any such finding would have been erroneous, as defendant was required to but failed to register when he moved to the state and twice a year thereafter, and the remorse expressed by defendant at sentencing was for the underlying sex offense, rather than for the failure to register.

Morrison v. State, 36 Fla. L. Weekly D504 (Fla. 4th DCA 2011):

Defendant convicted of failure by a sex offender to properly register was entitled to evidentiary hearing on his postconviction claim that trial counsel was ineffective for failing to call detective assigned to defendant's case as witness to confirm defendant's statements that he did not have an established address, that he called detectives weekly to let them know what was happening, and that he was told his registration was fine and he should change his address when he got settled; evidence that defendant knew he was required to register and did not do so did not conclusively show that detective's testimony would not have had reasonable probability of changing the outcome of trial.

Bishop v. State, 35 Fla. L. Weekly D1775 (Fla. 5th DCA 2010):

A defendant is entitled to a hearing before a sexual predator designation can be imposed pursuant to registration statute because the court must make findings as to the existence of the qualifying prior conviction.

Kingry v. State, 35 Fla. L. Weekly D378 (Fla. 1st DCA 2010):

Defendant's agreement to a sexual predator designation was a bargained-for part of the plea agreement; having freely and voluntarily entered into the agreement and accepted its benefits, he could not subsequently seek in a postconviction motion to be relieved of one of the burdens imposed upon him pursuant to the agreement.

Cabrera v. State, 29 Fla. L. Weekly D2243 (Fla. 5th DCA 2004):

Allegedly erroneous sexual predator designation is sentencing error that must be properly preserved for review. Error is not reviewable on appeal where defendant did not object at sentencing or file rule 3.800(b) motion. *Conflict certified*

State v. Mounce, 29 Fla. L. Weekly D402 (Fla. 5th DCA 2004):

Error to conclude that defendant was not required to re-register as sexual offender when he changed his address because his driver's license was not then subject to renewal. Change of residence alone is sufficient to trigger registration requirements of section 943.0435(4).

Coblentz v. State, 28 Fla. L. Weekly D2282 (Fla. 2d DCA 2003):

Gross abuse of discretion to fail to address merits of rule 1.540(b) motion seeking relief from judgment designating defendant a sexual predator,

which defendant had been encouraged to file after prior order denying motion to correct illegal sentence was affirmed on appeal.

Remand for attachment of documentation which demonstrates that defendant qualifies for treatment as a sexual predator or for hearing to determine whether defendant qualifies for such treatment.

Brittner v. State, 28 Fla. L. Weekly D943 (Fla. 1st DCA 2003):

Abuse of discretion to deny rule 1.540 motion for relief from judgment where defendant did not timely receive copy of trial court's order designating him a sexual predator and motion was filed within one year of receipt of judge's letter informing him of entry of sexual predator designation order.

Johnson v. State, 28 Fla. L. Weekly D940 (Fla. 1st DCA 2003):

Where trial court accepted defendant's stipulation that he was a sexual offender without disclosing to the jury any further details about the nature of his offenses, court did not err in rejecting defendant's proposed jury instruction that would "sanitize" the reference to defendant as a "sexual offender" by referring to him instead as a "felony offender."

Welch v. State, 27 Fla. L. Weekly D1856 (Fla. 2d DCA 2002):

The defendant was convicted for a sexual offense in Polk County and subsequently registered as a sexual offender in that county. He later moved to Manatee County and was arrested for failure to register. He was prosecuted in Polk county. The defendant argues that F.S. 775.21(6)(g), which allows the State to prosecute in numerous jurisdictions runs afoul of the Florida Constitution which states that one must be charged in the county in which the offense occurred. The court said it was not inclined to intervene prior to the defendant's conviction for failure to register, but hinted that this could be a problem

Discussion: This case could present a logistical problem for us. If a predator sweep is made in our county and the defendant is not at his registered address, charging him for failure to register may be inappropriate if he has actually moved to a new jurisdiction. There are several ways to get around this problem, such as issuing a warrant and deferring eventual prosecution to the later jurisdiction, but it is certainly an issue to keep in mind.

Beard v. State, 27 Fla. L. Weekly D1516 (Fla. 2d DCA 2002):

Defendant precluded from raising issue concerning sexual predator designation where issue was argued, considered, and rejected in prior appeal.

Leopold v. State, 756 So.2d 203 (Fla. 2d DCA 2000):

No error in designating defendant as sexual predator. Error to require hearing pursuant to version of Florida Sexual Predator's Act which does not apply to Defendant.

Discussion: This case does not give any significant facts to assist in research purposes.

Beaton v. State, 732 So.2d 5 (Fla. 4th DCA 1999):

Community and public notification requirements of 1996 version of Sexual Predators Act are not applicable to defendant whose offenses were committed between October 1, 1993, and October 1, 1995. Portions of order referencing statute's notice requirements to be stricken.

Jones v. State, 718 So.2d 1286 (Fla. 5th DCA 1998):

Any error in connection with sexual predator classification not ripe for review where trial court reserved jurisdiction to declare defendant a sexual predator, but did not do so.

Refusal to give lesser included offense instruction of committing unnatural and lascivious act in conjunction with charge on lewd and lascivious assault on child was not preserved for appellate review, where defense counsel abandoned request for instruction and agreed to proposed instructions that included as lesser offenses attempt, battery and assault.

Romano v. State, 718 So.2d 283 (Fla. 4th DCA 1998):

Even if Division of Statutory Revision improperly modified sexual battery statute in publishing session law in Florida Statutes, error was cured when legislature adopted published Florida Statutes as the official law.

Angell v. State, 712 So.2d 1132 (Fla. 2d DCA 1998):

Designation of defendant as sexual predator is neither a sentence nor punishment and the Florida Rules of Criminal Procedure do not, in general, apply to this statutory provision

Collie v. State, 710 So.2d 1000 (Fla. 2d DCA 1998):

- Trial court did not exceed its jurisdiction in designating defendant to be sexual predator more than sixty days after sentencing.
- New substantive provisions in amended statute regarding dissemination of public information and restrictions on employment and volunteer work which were added after commission of offense cannot be applied retrospectively.
- Because retrospective application of section 775.21 for purpose of seeking sexual predator designation did not increase penalty by which defendant's sexual offense was punishable, ex post facto challenge must be denied.
- Pleas bargain was not violated by subsequent sexual predator designation.
- Defendant was on notice that he would be subject to sexual predator classification by its publication in Laws of Florida or Florida Statutes.
- Designating an offender to be sexual predator after he or she has entered plea bargain does not constitute breach of contract because sexual predator designation is not form of punishment.
- Because registration requirements of section 775.21 are not so punitive as to negate legislature's clearly non-punitive intent, application of 1996 act does not violate Double Jeopardy Clauses.
- Argument that sexual predator designation, but itself, infringes on defendant's liberty rights is rejected because sexual predator statute, as applied to defendant, is non-punitive and remedial in nature.
- The only provision in 1996 Act which, if applied retrospectively, would infringe on constitutionally-protected liberty interest is employment restrictions imposed in section 775.21(9)(b).
- Review of 1996 Act does not reveal any deprivations of defendant's due process rights where employment restrictions are not applicable to defendant because they were not in effect at time he committed his current offense, and defendant has failed to argue on appeal that he is prohibited from pursing certain employment due to sexual predator designation.
- Procedural due process guarantees of hearing and opportunity to be heard are inapplicable as to defendant.
- Sexual predator proceedings were not criminal or quasi-criminal in nature and defendant had no constitutional right to counsel.

Morris v. State, 707 So.2d 1203 (Fla. 4th DCA 1998):

Where there was proper waiver of counsel at trial, after appropriate inquiry by trial court, trial court was required to renew offer of counsel at hearing on state's motion to have defendant declared a sexual predator, but was not required to go through *Faretta* requirements. No error in proceeding with hearing after defendant rejected renewed offer of counsel.