



# The Florida Senate

Issue Brief 2012-214

September 2011

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Committee on Criminal Justice

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## EXAMINE FLORIDA'S "ROMEO AND JULIET" LAW

### Statement of the Issue

Florida's "Romeo and Juliet" law was created during the 2007 Legislative Session to address concerns about high school age youth being labeled as sexual offenders or sexual predators as a result of participating in a consensual sexual relationship. The stigma and consequences that come with that classification have lifelong consequences that affect things such as an offender's future employment opportunities, an offender's ability to attend his or her own child's school functions, and where an offender can live. The registry provides no clear distinction between the young "Romeo and Juliet" sex offenders who had consensual sex and the offenders who harm children and pose a real risk to society.

Section 943.04354, F.S., creates a mechanism for this group of offenders to file a motion or petition in state court for removal of the registration requirement if they meet certain criteria while still complying with federal law requirements set forth in the Adam Walsh Act. Because this mechanism does not conflict with the Adam Walsh Act, federal grant money from the Edward Byrne Justice Assistance Grant is not jeopardized.

The purpose of this issue brief is to review the "Romeo and Juliet" law, provide data regarding the offender population using the mechanism created in the law, and compare the law with that of several other states.

### Discussion

#### Background:

Concerns regarding the application of the sex offender registry to "Romeo and Juliet"-type relationships were raised by several members of the Senate Criminal Justice Committee during the 2006 Legislative Session; however, legislation was not filed until the 2007 Legislative Session to address those concerns. The delay was due in part to pending federal legislation (Adam Walsh Act) that if passed would affect Florida's sexual offender and predator registry laws.

#### *Federal Adam Walsh Child Protection and Safety Act*

The federal Adam Walsh Child Protection and Safety Act was signed into law in July of 2006.<sup>1</sup> Title I of the Act, known as the Sex Offender Registration and Notification Act (SORNA), establishes minimum registry standards states have to meet.<sup>2</sup> If a state fails to meet the federal requirements, they risk losing 10% of the state portion of their Edward Byrne Memorial Justice Assistance Grant Program (JAG) funding.<sup>3</sup> Florida was found to have substantially implemented the Act on May 14, 2010.<sup>4</sup> The JAG allocation each state receives varies from year to

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<sup>1</sup> Public Law 109-248.

<sup>2</sup> 42 U.S.C. ss. 16901-16962.

<sup>3</sup> 42 U.S.C. 16925, SEC. 125.

<sup>4</sup> In an effort to comply with the Adam Walsh Act, the 2007 Legislature made several changes to Florida's law regarding registration of sexual offenders and sexual predators (2007-209, L.O.F.). One significant change expands the population of offenders required to register to include juveniles adjudicated delinquent of certain crimes. According to the SORNA Supplemental Guidelines released on January 11, 2011, states are not required to provide public notification of juveniles adjudicated delinquent. See [www.ojp.gov/smart/sorna\\_tools.htm](http://www.ojp.gov/smart/sorna_tools.htm) ("the Attorney General has exercised his authority in these supplemental guidelines to provide that jurisdictions need not publicly disclose information concerning persons required to register on the basis of juvenile delinquency adjudications.... There is no remaining requirement under SORNA that jurisdictions engage in any form of public disclosure or notification regarding juvenile delinquent sex offenders. Jurisdictions

year; however, for Florida it has always been a significant amount. In 2010, the state portion of JAG funds Florida received was over 19 million dollars,<sup>5</sup> of which ten percent (nearly 2 million dollars) would be lost if Florida were to fail to stay in compliance with the provisions of SORNA.

### ***“Romeo and Juliet” Offender Laws***

Various states have enacted laws commonly referred to as “Romeo and Juliet” laws which are intended to protect the group of young sexual offenders who are relatively close in age to their victims and engaged in consensual sex from registering as sexual offenders. Some states, like Florida, have done this using a motion or petition process for registration relief, some have provided age-gap provisions, while others have gone so far as to legalize certain sexual conduct between minors and/or those close in age to avoid not only the registration requirement but the criminal charge previously associated with the sexual conduct.

### **Florida’s “Romeo and Juliet” Law**

In Florida, prior to the passage of s. 943.04354, F.S., if a 15 year-old and an 18 year-old were engaged in a consensual sexual relationship, the 18 year-old was subject to registration as a sexual offender and could not petition the court for removal of the requirement to register for 20 years after the completion of his or her sentence, or if adjudication was withheld, 10 years after being released from all sanctions.<sup>6</sup> Florida’s “Romeo and Juliet” law does not make it legal for an 18 year-old to have a sexual relationship with a 15 year-old; however, it does provide a mechanism for the offender to petition or make a motion to the court to remove the requirement to register as a sexual offender if certain criteria are met.

### ***Florida’s “Romeo and Juliet” Petition Process under s. 943.04354, F.S.***

Section 943.04354, F.S., provides a process allowing a motion<sup>7</sup> or petition<sup>8</sup> for removal of the requirement to register as a sexual offender or sexual predator for qualifying “Romeo and Juliet” offenders who meet specific criteria outlined in the statute. Most notably, the victim must be at least 14 years-old,<sup>9</sup> the offender no more than 4 years older than the victim at the time of the offense, and the victim must have consented<sup>10</sup> to the sexual conduct. Qualifying offenses for consideration of registration relief by the court fall under the following statutes: s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 827.071, F.S.<sup>11</sup> (sexual performance by a child); or s. 847.0135(5), F.S.<sup>12</sup> (certain computer transmissions prohibited).

Section 943.04354, F.S., only addresses an offender’s registry requirement and does not make any of the above qualifying offenses legal. The sexual conduct associated with these offenses is still a crime<sup>13</sup> when the victim is 15 years of age or younger, even if both of the participants are minors and the act was consensual. For minors

are free to do so, but need not do so to any greater extent than they may wish.”) The registration requirements would still require juveniles registration information to be available to law enforcement agencies.

<sup>5</sup>See <http://www.ojp.usdoj.gov/BJA/grant/jag.html>. For 2010, Florida received a total allocation of \$30,918,529 (\$19,268,732 state portion/\$11,649,797 local government/10% of state portion \$1,926,873).

<sup>6</sup>Section 943.0435, F.S., as amended in 2007, removed the 10 year stipulation for those offenders whose adjudication was withheld and changed the minimum number of years an offender must wait from 20 to 25 years.

<sup>7</sup> New offenders *not* currently registering can make a “motion” to the court to be considered at sentencing or disposition of sentencing to avoid ever going on the registry.

<sup>8</sup> Offenders currently registered as a sexual offender or predator must “petition” the court in which the disposition for the violation occurred.

<sup>9</sup> SORNA provisions allow the victim to be at least 13 years of age. 42 U.S.C. 16911.

<sup>10</sup> Section 943.04354, F.S., requires registration removal comply with federal law. Section 111(5)(C) of the Adam Walsh Act requires consensual sexual conduct. “Consent” as defined in s. 800.04(1)(b), F.S., “means intelligent, knowing, and voluntary consent, and does not include submission by coercion.” “Consent” as defined in s. 794.011(1)(a), F.S., “means intelligent, knowing, and voluntary consent and does not include coerced submission. ‘Consent’ shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.”

<sup>11</sup> Added to the statute as a qualifying offense in 2010 as part of ch. 2010-92, L.O.F.

<sup>12</sup> Added to the statute as a qualifying offense in 2008 as part of ch. 2008-172, L.O.F.

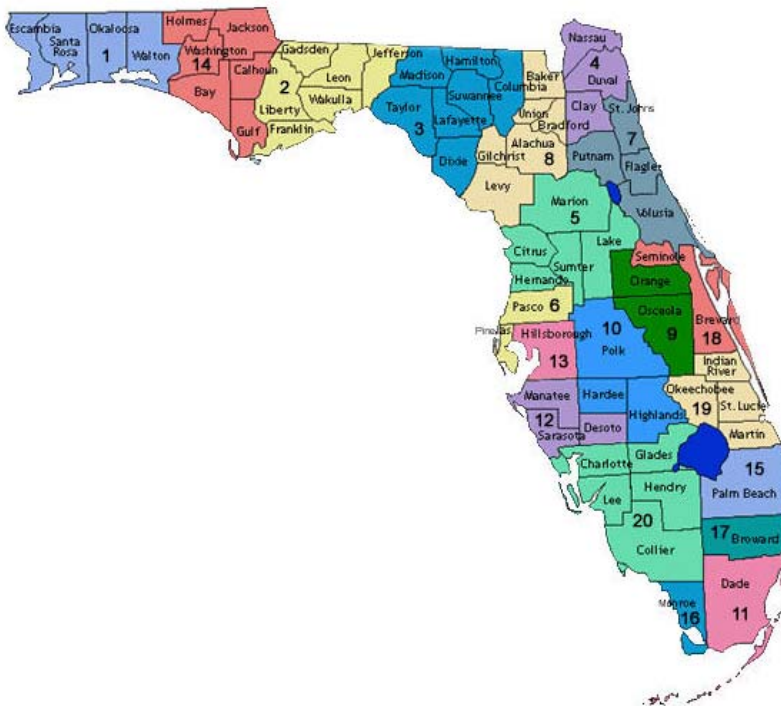
<sup>13</sup> These qualifying offenses are all felonies, none of which can be expunged pursuant to s. 943.0585, F.S., including when the offender was a minor.

ages 16-17, s. 794.05, F.S., provides an age-gap provision that allows a 16 or 17 year-old to legally consent to sexual conduct with a person 16-23 years of age.<sup>14</sup> The fact that an offender may not have known the age of the victim or the victim portrayed themselves to be older, cannot be used as a defense to prosecution under s. 800.04, F.S.,<sup>15</sup> or ch. 794, F.S.<sup>16</sup> However, as provided in s. 921.0026, F.S., these facts can be offered at sentencing as mitigation for the court’s consideration.

Under the provisions in s. 943.04354, F.S., an offender is limited to one motion or petition.<sup>17</sup> If the court does not grant the motion or petition, the offender has to wait until 25 years after completion of sentence before he or she can petition the court under s. 943.0435, F.S.<sup>18</sup>

**Granted Petitions**

As of July 2011, registry records indicate 241<sup>19</sup> petitions for the removal of the requirement to register have been granted by the courts. Ninety-three percent of the offenders granted relief had a lewd or lascivious offense (s. 800.04, F.S.), as their qualifying offense. The highest percentage of petitions granted (24%) was in the 6th Judicial Circuit which makes up Pasco and Pinellas Counties. Following are the number of petitions granted by judicial circuit and offender/victim data.



Circuit	Number Granted	Circuit	Number Granted
1 <sup>st</sup>	40	11 <sup>th</sup>	6
2 <sup>nd</sup>	9	12 <sup>th</sup>	11
3 <sup>rd</sup>	0	13 <sup>th</sup>	5
4 <sup>th</sup>	23	14 <sup>th</sup>	1
5 <sup>th</sup>	18	15 <sup>th</sup>	5
6 <sup>th</sup>	59	16 <sup>th</sup>	3
7 <sup>th</sup>	7	17 <sup>th</sup>	7
8 <sup>th</sup>	11	18 <sup>th</sup>	7
9 <sup>th</sup>	11	19 <sup>th</sup>	4
10 <sup>th</sup>	6	20 <sup>th</sup>	8

Offender/Victim Data	
Age of offenders ranged from 14-21	Avg. age 18
Age of victims ranged from 13-17	Avg. age between 14-15
Age gap between offender and victim ranged from 1-5 years	Avg. age gap between 3 and 4 years.
Gender of offenders was both male and female	Avg. offender was male (98%)

<sup>14</sup> Section 794.05, F.S., does not apply to a 16 or 17 year-old who has had the disabilities of nonage removed under ch. 743, F.S.

<sup>15</sup> Section 800.04(3), F.S.: “Ignorance or Belief of Victim’s Age. – The perpetrator’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the perpetrator’s bona fide belief of the victim’s age cannot be raised as a defense in a prosecution under this section.”

<sup>16</sup> Section 794.021, F.S.: “Ignorance or belief as to victim’s age no defense. – When, in this chapter, the criminality of conduct depends upon the victim’s being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.”

<sup>17</sup> Unlike Florida’s Romeo and Juliet provision in s. 943.04354, F.S., s. 943.0435, F.S., allows for a subsequent petition (“the court may set a future date at which the sexual offender may again petition the court for relief...”).

<sup>18</sup> To qualify for a petition under s. 943.0435, F.S., an offender must be “lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and [must not have] been *arrested* for any felony or misdemeanor offense since release...” Section 115(b)(1)(A) and (B) of the Adam Walsh Act, when speaking to reducing the period of registration, indicates a *Clean Record* to mean “(A) not being *convicted* of any offense for which imprisonment for more than 1 year may be imposed; (B) not being *convicted* of any sex offense.” 42 U.S.C. 16915.

<sup>19</sup> Data regarding granted petitions obtained from the Florida Department of Law Enforcement.

### *Petitions Not Granted*

There is no way to determine exactly how many motions or petitions for relief have not been granted by the courts. Survey responses from state attorneys indicate that one reason a judge would deny a petition would be if the offender did not meet the criteria of the statute. Another reason would be if the state attorney objected. When asked why a prosecutor might object, even if the offender appeared to meet the criteria of the statute, some of the reasons provided are:

- defendant's criminal history,
- evidence of similar uncharged/non-arrested behavior,
- situation appeared more coercive than consensual,
- offender provided drugs or alcohol to the victim,
- prior warning by parents or others to stay away from the victim,
- defendant had multiple charged and uncharged relationships with minors,
- offender "targeted" the under-age victim on web or chat room, or
- the offender was in a position of authority over the victim.

### **Other States**

#### *Age of Consent*

"Most states do not define the term 'age of sexual consent.' States statutes do say that based on age, certain individuals do not have the capacity to consent to having sex. The age of consent is then determined by what is *not* considered a criminal act."<sup>20</sup>

The selection by states of an age of consent and/or age-gap provision affects who may be prosecuted and potentially convicted for a sexual offense that requires registration. Age of consent laws vary from state to state (16–18 years of age), thus what may be perfectly legal in one state, may, by virtue of crossing the state line, become a crime in another state. For example, the states of Georgia and Alabama, which border Florida, have an age of consent of 16 while Florida's age of consent is 18 years of age. While the age of consent in Florida is 18 years of age, Florida law does have an age-gap provision that provides that a 16 or 17 year-old can legally consent to sexual conduct with a person 16-23 years of age.<sup>21</sup>

Even though states' laws establish age of consent and/or age gap provisions that allow a minor under 18 to consent to sexual conduct, many states, including Florida, have other provisions in law that make it unlawful for an offender, even if the victim is over the age of consent or within an age-gap provision range, to engage in sexual conduct with a person under 18 years of age. These provisions differ from state to state. A common provision seen among various states is when the victim is under the familial or custodial authority of the offender.<sup>22</sup>

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<sup>20</sup> Document from National Conference of State Legislatures (NCSL), dated June 2009 entitled "Age of Consent Laws."

<sup>21</sup> Section 794.05, F.S.

<sup>22</sup> Section 794.011(8)(a) and (b), F.S., states "without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who: (a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree...(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree...."

Section 794.011(1)(h), F.S., defines "sexual battery" to mean "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose."

**Comparison Between Florida’s and Other States Provisions**

States do not treat young sex offenders the same. As previously discussed, consent laws vary from state to state, thus affecting the ages at which a person can legally consent to sexual conduct. The chart below provides a comparison between Florida and a few other states that have close-in-age provisions in their state laws.

State	Provision <sup>23</sup>
<p>Florida Age of Consent 18</p>	<p>Section 943.04354, F.S. (“Romeo and Juliet” Law):</p> <ul style="list-style-type: none"> <li>• Provides petition process for removal of the requirement to register for qualifying offenders who are already on the sex offender registry.</li> <li>• For offenses that occurred on or after July 1, 2007, allows qualifying offenders to make a motion to the court for relief of the requirement to register.</li> <li>• Allows a 4 year age gap between the victim and the offender for exclusion of the registration requirements for certain offenses that are consensual.</li> <li>• Victim must be at least 14 but no older than 17 years of age.</li> </ul> <p>Section 794.05, F.S.:</p> <ul style="list-style-type: none"> <li>• Provides an age-gap provision that allows a 16 or 17 year old to consent to consensual conduct with a person 16-23 years of age.</li> </ul>
<p>Michigan Age of Consent 16</p>	<p>Similar Provisions:</p> <ul style="list-style-type: none"> <li>• Provides petition process for removal of the requirement to register for qualifying offenders who are already on the sex offender registry prior to passage of the new law.</li> <li>• Allows a 4 year age gap between the victim and the offender for exclusion of the registration requirements for certain offenses that are consensual.</li> <li>• Provides a process for removal of the requirement to register for qualifying offenders whose offense occurred after the laws effective date, thus avoiding ever being on the registry.</li> </ul> <p>Different:</p> <ul style="list-style-type: none"> <li>• Victim involved in the consensual sexual conduct must be at least 13 but less than 16 years of age.</li> </ul>
<p>Texas Age of Consent 17</p>	<p>Similar:</p> <ul style="list-style-type: none"> <li>• Provides petition process for removal of the requirement to register for qualifying offenders who are already on the sex offender registry prior to passage of the new law as well as new offenders.</li> </ul> <p>Different:</p> <ul style="list-style-type: none"> <li>• Victim must be at least 15 years of age and offender no more than 4 years older than victim for offender to qualify for removal of the requirement to register.</li> </ul>
<p>Vermont Age of Consent 16</p>	<p>Different:</p> <ul style="list-style-type: none"> <li>• Provides an “age gap” exception which applies to certain sexual offenses where both participants consented and one is a minor, providing if a person is charged with one of the specified crimes, no crime is committed if the child is at least 15 and the other person is less than 19 years-old.</li> <li>• No mention of the law being retroactive for offenses that occurred prior to passage of law.</li> </ul>
<p>Connecticut Age of Consent 16</p>	<p>Different:</p> <ul style="list-style-type: none"> <li>• Decriminalizes consensual sexual activity between teenagers close in age allowing a 3 year age difference when the teen is at least 13 but under 16 before the older teen is guilty of second-degree sexual assault.</li> <li>• Decriminalizes consensual sexual contact between children and teenagers close in age if the victim is under 13 and the offender is no more than 2 years older than the victim or three years older than a victim at least 13 but under 15 years of age for fourth-degree sexual assault.</li> </ul>
<p>Georgia Age of Consent is 16</p>	<p>Different:</p> <ul style="list-style-type: none"> <li>• Has an age gap provision in several sex offense codes that makes the crimes a misdemeanor, not subject to sexual offender registration, for a person 18 years old or younger when the victim is at least 14 but less than 16 and offender is no more than 4 years older than victim.</li> </ul>

<sup>23</sup> Chart information is based on a review of applicable state statutes, legislation, and analyses.