

STORAGE NAME: h1485.sgc.doc
DATE: April 19, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: HB 1485
RELATING TO: Sexual Offenders Release Supervision
SPONSOR(S): Representative Kravitz and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

HB 1485 amends the conditional release statute to clarify that a "school bus stop" is a "place where children regularly congregate" under the statute. Under current law, certain sex offenders under conditional release cannot live within 1000 feet of a school, day care center, park, playground, or other place where children regularly congregate. The bill adds "school bus stop" to the list of place where children regularly congregate.

The bill also prohibits conditional releasees who were convicted of certain sex offenses from living within 1 mile of places where children congregate, rather than 1000 feet of those places.

The bill takes effect on July 1, 2001.

An amendment adopted by the Committee on Judicial Oversight removes the provision changing the distance from which certain releasees can live from places where children congregate and restores current law. The amendment is traveling with the bill.

The Council for Smarter Government adopted two amendments that are traveling with the bill. See Section VI Amendments or Committee Substitute Changes for discussion of the amendments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The conditional release program is created by s. 947.1405, F.S. It permits an inmate convicted of certain crimes who is nearing the end of his or her sentence to be released under close supervision.¹ If the releasee successfully completes the conditional release program, the inmate is no longer supervised by the court or the Department of Corrections. If the releasee violates the conditions of his or her conditional release, the releasee is returned to prison and his or her gain time is forfeited. The Florida Supreme Court recently explained the purposes of the conditional release program:

The Legislature has determined that habitual offenders and offenders who have committed certain types of violent offenses after having served a prior commitment to prison should receive supervision after release. This supervision should help these former inmates in bridging the gap between prison and the outside world. To encourage releasees to comply with the terms and conditions of supervision, the program provides that if the releasee fails to do so, the releasee will be returned to prison and his gain time will be forfeited.

Duncan v. Moore, 754 So. 2d 708, 710 (Fla. 2000).

The conditional release program works as follows. When an inmate is sentenced to a prison term, the inmate is given a "maximum sentence expiration date", which is the date that the inmate's sentence will expire.² Each inmate is given a "tentative release date", the date that the inmate will be released from prison when all of the inmate's gain time is deducted from his or her sentence.³ When an inmate reaches 180 days prior to his or her tentative release date, the inmate's records are reviewed by the Parole Commission.⁴ The Commission establishes the terms and conditions of the inmate's conditional release and may determine the length of the inmate's supervision.⁵ The period of conditional release supervision cannot exceed the maximum penalty imposed by the court.⁶

¹ See ss. 947.1405(1)-(8), F.S.

² See s. 944.275(2)(a), F.S.

³ See s. 944.275(3)(a), F.S.

⁴ See s. 947.1405(5), F.S.

⁵ See s. 947.1405(6), F.S.

⁶ See s. 947.1405(6), F.S.

If an inmate is convicted of certain sex crimes or sexual battery crimes⁷, the statute requires that an inmate who is released on conditional release must remain on conditional release for the remainder of the sentence imposed by the court.⁸ In addition to any terms and conditions imposed by the Commission, section 947.1405(7)(a), F.S., requires the Commission to impose certain conditions including:

1. a mandatory curfew;
2. if the victim was under the age of 18, a prohibition on living within 1000 feet of a school, day care center, park, playground, or other place where children regularly congregate;
3. participation in a sex offender treatment program;
4. a prohibition on contact with the victim;
5. a prohibition on unsupervised contact with children if certain conditions or met;
6. a prohibition on working at any school, day care center, park, playground, or other place where children congregate if the victim was under 18;
7. a prohibition on the possession of pornographic or sexually stimulating materials;
8. a requirement that the releasee submit a DNA sample to the Florida Department of Law Enforcement;
9. a requirement that the releasee make restitution to the victim; and
10. submission to warrantless searches by the releasee's probation officer of the releasee's person, residence, or vehicle.⁹

If a person on conditional release violates the conditions of his or her release, the releasee can be returned to prison and have his gain time forfeited.¹⁰ When a violation is alleged, the releasee is entitled to a hearing before the Parole Commission or its hearing officer.¹¹ After a hearing, the Commission can revoke conditional release, impose new conditions on the release, or allow conditional release to continue.¹²

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 947.1405(7)(a), F.S. to make clear that a "school bus stop" is one of the places that certain persons on conditional release are not permitted to live. While it can be argued that a "school bus stop" is already covered by the prohibition on living within 1000 feet of a place where "children regularly congregate", this bill makes the prohibition clear to prevent future litigation.

⁷ Crimes include violations of the sexual battery statute, ch. 794, F.S., violations of the lewd and lascivious acts statute, s. 800.04, F.S., violations of the statute prohibiting sexual performance by a child, s. 827.071, F.S., and violations of the statute prohibiting the selling or buying of minors for sexual activity, s 847.0145, F.S.

⁸ See s. 947.1405(6), F.S.

⁹ See s. 947.1405(7)(a)(1-10), F.S.

¹⁰ See s. 947.141, F.S.

¹¹ See s. 947.141, F.S.

¹² See s. 947.141, F.S.

The bill also prohibits conditional releasees governed by section 947.1405(7)(a), F.S. (certain sex offenders) from living within 1 mile of places where children congregate, rather than 1000 feet of those places.

The bill takes effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Florida Supreme Court recently rejected various constitutional challenges to the conditional release program. In Duncan v. Moore, 754 So. 2d 708 (Fla. 2000), the court rejected claims that the statute violated the double jeopardy clause, the ex post facto clause, the due process clause, and the equal protection clause.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The Department of Corrections has explained what happens under current practice if, for example, a school is built within 1000 feet of where a person on conditional release already lives. In that case, the Department (through a probation officer) notifies the releasee of the school and gives the offender the opportunity to move. If the releasee does not move, the probation officer reports the violation and the offender is entitled to a hearing before the parole commission. The commission determines whether the violation is sufficient to revoke the offender's controlled release. In such a hearing, the state must prove, by a preponderance of the evidence, that the offender willfully violated the conditions of his or her release. The commission can revoke the offender's release or modify the conditions of release.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judicial Oversight considered the bill on April 3, 2001, and adopted an amendment to change the distance which convicted sex offenders on controlled release must live from places where children congregated from 1 mile to 1000 feet. The amendment restores current law. The amendment is traveling with the bill.

The Council for Smarter Government considered the bill on April 19, 2001, and adopted two amendments. Amendment #2 created a new statutory provision to make it a crime for anyone convicted of violations of s. 794.011, F.S.¹³, s. 794.05, F.S.¹⁴, s. 800.04, F.S.¹⁵, s. 827.071, F.S.¹⁶, or s. 847.0145, F.S.¹⁷, in which the victim was under the age of 16 to reside within 1000 feet of a school, day care center, park, or playground. If the offender was convicted of one of the listed offenses which was classified as a first degree felony, a violation of the new statute is a third degree felony. If the offender was convicted of one of the listed offenses which was a second or third degree felony, a violation of the new statute is a first degree misdemeanor. The provision of law created by Amendment #2 applies to persons convicted of violations of s. 794.011, F.S., s. 794.05, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0145, F.S., for violations of those statutes which occur on or after October 1, 2001.

¹³ Sexual battery

¹⁴ Unlawful sexual activity with certain minors

¹⁵ Lewd and lascivious offenses

¹⁶ Sexual performance by a child

¹⁷ Selling or buying of minors

Amendment #3 creates another new statutory section that creates the same crime created by Amendment #2. However, the crime created by amendment #3 applies retrospectively to all persons who have been convicted of violations of s. 794.011, F.S., s. 794.05, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0145, F.S.

Amendment #3 raises constitutional issues. Article I, s. 9, U.S. Const., and article I, s. 10, Fla. Const., prohibit ex post facto laws. In evaluating whether a law violates the ex post facto clause, courts apply a two-prong test: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable. See Gwong v. Singletary, 683 So. 2d 109, 112 (Fla. 1996); California Dep't of Corrections v. Morales, 514 U.S. 499 (1995). It can be argued that a prohibition on where someone can live constitutes punishment under the ex post facto clause of either the state or federal constitutions. No court has directly addressed the issue. If a court were to hold that a restriction on where a person can live was punishment, the amendment would violate the ex post facto clauses.

Courts have held that provisions requiring the registration of certain sexual offenders is not punishment under the ex post facto clause. See e.g. Simmons v. State, 753 So. 2d 762 (Fla. 4th DCA 2000). Instead, the court held that the registration requirements are merely regulatory. See Simmons, 753 So. 2d at 763. If the court were to hold that restrictions on living location were regulatory, it would find no ex post facto violation.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

L. Michael Billmeier

Lynne Overton

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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