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DATE: October 23, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 79

RELATING TO: Sexual Offenders

SPONSOR(S): Representative Kravitz

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) JUDICIAL OVERSIGHT
 - (3) LIFELONG LEARNING COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

HB 79 amends the conditional release statute to add "school bus stop" to the list of places a sexual offender cannot live within 1,000 feet of. Under current law, certain sex offenders under conditional release cannot live within 1,000 feet of a "school, day care center, park, playground, or other place where children regularly congregate."

The bill takes effect on July 1, 2002.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. PRESENT SITUATION:

The conditional release program is created by § 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.²

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.³ 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.⁴ When an inmate reaches 180 days prior to his or her tentative release date, the inmate's records are reviewed by the Parole Commission.⁵ The Commission establishes the terms and conditions of the inmate's conditional release and may determine the length of the inmate's supervision.⁶ The period of conditional release supervision cannot exceed the maximum penalty imposed by the court.⁷

¹ See §§ 947.1405(1)-(8), F.S.

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

³ See § 944.275(2)(a), F.S.

⁴ See § 944.275(3)(a), F.S.

⁵ See § 947.1405(5), F.S.

⁶ See § 947.1405(6), F.S.

⁷ See § 947.1405(6), F.S.

If an inmate is convicted of certain sex crimes or sexual battery crimes⁸, 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.⁹ In addition to any terms and conditions imposed by the Commission, § 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.¹⁰

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.¹¹ When a violation is alleged, the releasee is entitled to a hearing before the Parole Commission or its hearing officer.¹² After a hearing, the Commission can revoke conditional release, impose new conditions on the release, or allow conditional release to continue.¹³

C. EFFECT OF PROPOSED CHANGES:

The bill amends § 947.1405(7)(a), F.S., to include a "school bus stop" as one of the places that certain persons on conditional release are not permitted to live within 1,000 feet of. While it can be argued that a "school bus stop" is already covered by the prohibition on living within 1,000 feet of a place where "children regularly congregate," this bill makes this specific prohibition clear.

This bill takes effect July 1, 2002.

⁸ Crimes include violations of the sexual battery statute, ch. 794, F.S., violations of the lewd and lascivious acts statute, § 800.04, F.S., violations of the statute prohibiting sexual performance by a child, § 827.071, F.S., and violations of the statute prohibiting the selling or buying of minors for sexual activity, § 847.0145, F.S.

⁹ See § 947.1405(6), F.S.

¹⁰ See §§ 947.1405(7)(a)(1-10), F.S.

¹¹ See § 947.141, F.S.

¹² See § 947.141, F.S.

¹³ See § 947.141, F.S.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C.

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:

Local school boards may decide to coordinate school bus stops with the residences of affected sex offenders which may require expenditures for technology related equipment, software and staff.

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.

A recent decision by the First District Court of Appeals *Britt v. State*, 775 So.2d 415 (Fla. 1st DCA 2001) addressed whether the phrase "or other place where children regularly congregate" in §§ 948.03(5)(a)2 & 6 (which is similarly worded to § 947.1405(7)(a)2) is unconstitutionally vague. The court ruled that this is not unconstitutionally vague and gives the offender sufficient notice of what constitutes forbidden conduct.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to an analysis prepared by the Department of Corrections, the department has encountered numerous obstacles enforcing the 1,000 foot limitations which are required by current law on both post-prison release and supervised probation sex offenders. Offenders who currently live within 1,000 feet of school bus stops would be requested to move by the supervising officers, and if they fail to do so, a violation of conditional release will be reported to the Parole Commission. The Parole Commission and the Courts are sometimes reluctant to move offenders from existing residences that were "legitimate" at the time of initial residence, especially if the offender is complying with the other conditions of supervision.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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