

STORAGE NAME: h0079.jo.doc
DATE: January 4, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 79
RELATING TO: Sexual Offenders/School Bus Stops
SPONSOR(S): Representatives Kravitz, Fasano, and others
TIED BILL(S): None

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

- (1) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 10 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) LIFELONG LEARNING COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

The conditional release program permits an inmate convicted of certain crimes who is nearing the end of his or her sentence to be released under close supervision. 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.

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." HB 79 amends the conditional release statute to add "school bus stop" to the list of places where a sexual offender on conditional release cannot live within 1,000 feet.

The Committee on Crime Prevention, Corrections & Safety adopted an amendment that makes it unlawful for any person who has been convicted of one of a list of specified sexual offenses against a minor less than age 16 to reside within 1,000 feet of any school, day care center, park or playground. A second amendment adopted by the Committee requires school boards to consider the residence of sexual offenders when setting the locations of school bus stops.

The Criminal Justice Estimating Conference has not determined whether this bill will have a fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

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 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.²

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 date the inmate will be released from custody if he or she fulfills all gain time requirements) or provisional release date (the date an inmate will be released in certain prison crowding situations), 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 when he or she is released on his tentative release date or provisional release date.⁶ The period of conditional release supervision cannot exceed the maximum penalty imposed by the court.⁷

¹ See ss. 947.1405(1)-(8), F.S.

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

³ See s.944.275(2)(a), F.S.

⁴ See s.944.275(3)(a), F.S.

⁵ See s.947.1405(5), F.S.

⁶ See s.947.1405(6), F.S.

⁷ See s.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, s. 947.1405(7)(a), F.S., requires the Commission to impose certain conditions including:

1. 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. Prohibition on contact with the victim;
5. Prohibition on unsupervised contact with children if certain conditions are met;
6. Prohibition on working at any school, day care center, park, playground, or other place where children congregate if the victim was under 18;
7. Prohibition on the possession of pornographic or sexually stimulating materials;
8. Submission of a DNA sample to the Florida Department of Law Enforcement;
9. 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 or her 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 the conditional release, impose new conditions on the release, or allow conditional release to continue.¹³

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 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. 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, 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.

⁹ See s. 947.1405(6), F.S.

¹⁰ See ss. 947.1405(7)(a)(1-10), F.S.

¹¹ See s. 947.141, F.S.

¹² See s. 947.141, F.S.

¹³ See s. 947.141, F.S.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference has not yet determined the fiscal impact of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

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

This bill is exempt from the requirements of Art. VII, s. 18, Fla. Const., because it is a criminal law.

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.

In *Britt v. State*, 775 So.2d 415 (Fla. 1st DCA 2001), the court addressed whether the phrase “or other place where children regularly congregate” in ss. 948.03(5)(a)2. and .03(5)(a)6. (which is similarly worded to s. 947.1405(7)(a)2., F.S.) is unconstitutionally vague. The court ruled that the phrase is not unconstitutionally vague and gives the offender sufficient notice of what constitutes forbidden conduct.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to a Department of Corrections bill analysis, dated September 20, 2001, 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.

In its September 20, 2001, bill analysis, the Department of Corrections stated, “It is believed the school bus stop language would be virtually unenforceable due to the number of school bus stops and the geographical coverage, which would preclude the establishment of a residence within developed areas of a city or community.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On November 27, 2001, the Committee on Crime Prevention, Corrections, and Safety adopted three amendments. Amendment 1 expands the scope of offenders whose place of residency would be limited to individuals convicted of violating specified sexual offenses upon a person less than age 16. Under the amendment, persons convicted of certain sex crimes that occurred after October 1, 2001, could not live within 1,000 feet of a school, day care center, park, or playground.

Amendment 1 could be challenged by an offender who commits a crime and is convicted after October 1, 2001 but prior to the effective date of the bill. That offender could argue that the residency requirement is additional punishment and prohibited by the ex post facto provisions of the state and federal constitutions. Ex post facto challenges have been rejected in cases where the court held the restriction was not punishment. See e.g. *Kansas v. Hendricks*, 521 U.S. 346 (1997)(allowing involuntary civil commitment of certain sex offenders because commitment was not “punishment” under the ex post facto provision); *Collie v. State*, 710 So. 2d 1000 (Fla. 2d DCA 1998)(defining someone as a “sexual predator” and requiring registration does not violate ex post facto provisions). If a court held that the residency restriction was not punishment under the ex post facto clause, the ex post facto provision is not implicated.

Amendment 3 requires school boards to regard an area as presumptively unsafe if the area is within 1,000 feet of where a person lives who is under Department of Corrections supervision pursuant to s. 947.1405(7), F.S. (sex offenders on conditional release), or s. 948.03(5)(a), F.S. (certain sex offenders on probation), in cases where the victim was under age 18.

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Amendment 4 changes the effective date of the bill to upon becoming law.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:
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Staff Director:
Trina Kramer

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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