

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 488

SPONSOR: Senator Villalobos

SUBJECT: Probation or Community Control

DATE: March 4, 2003 REVISED: \_\_\_\_\_

|    | ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-------------------|----------------|-----------|------------------|
| 1. | <u>Clodfelter</u> | <u>Cannon</u>  | <u>CJ</u> | <u>Favorable</u> |
| 2. | _____             | _____          | <u>JU</u> | _____            |
| 3. | _____             | _____          | _____     | _____            |
| 4. | _____             | _____          | _____     | _____            |
| 5. | _____             | _____          | _____     | _____            |
| 6. | _____             | _____          | _____     | _____            |

## I. Summary:

Section 948.03, F.S., provides mandatory conditions of probation for offenders who are on probation or community control for committing certain sexual offenses. If the crime was committed after September 30, 1995, and the victim was under 18 years of age, the offender is prohibited from living within 1000 feet of a school, day care center, park, playground or other place where children regularly congregate. This bill specifies that this distance must be measured in a straight line from the boundary of the property to the offender's residence, without considering the distance that an automobile or pedestrian would travel.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 948.03.

## II. Present Situation:

Section 948.03(5)(a)2, F.S., requires a sentencing court to impose certain conditions of probation upon offenders who committed certain sex offenses after September 30, 1995. If the victim in the offense was a minor, these mandatory conditions include a prohibition against living within 1000 feet of a school, day care center, park, playground, or other place where children regularly congregate. The offenses which trigger the imposition of these special conditions are: Chapter 794 (Sexual Battery); s. 800.04, F.S. (Lewd and Lascivious Offenses Committed Upon or in the Presence of Persons less than 16 years of age); s. 827.071, F.S. (Sexual Performance by a Child); and s. 847.0145, F.S. (Selling or Buying of Minors). According to information provided by the Department of Corrections, as of November 30, 2002, there were 4,008 offenders under supervision for one of the qualifying offenses involving a minor victim. The court imposed the mandatory special conditions for sex offenders upon 1493 (37 percent) of these offenders.

The department supervises sexual offenders who are subject to the 1000 foot condition. According to Procedure Number 302.704 (Special Conditions for Sexual Offenders/Sexual Predators), the offender's probation officer first identifies any prohibited locations that are near the offender's residence. The officer then uses local law enforcement systems, computer software, or a GPS database mapping system to establish a 1000 foot radius around the offender's residence or proposed residence. If there is a prohibited location near the 1000 foot radius line and the initial measurement is not precise, the officer and supervisor have discretion to measure the distance with a measuring wheel. However, measurement with a wheel is not always possible because there may be obstructions in the way and the officer cannot measure across private property without permission. If an offender is found to be residing within the 1000 foot radius, the probation officer takes action to remove the offender from the residence. Offenders who willfully violate the 1000 foot requirement are subject to violation of probation proceedings.

Other criminal statutes that have a distance requirement include: s. 741.31, F.S. (concerning violation of an injunction for protection against domestic violence); s. 790.115(1), F.S. (prohibiting exhibition of a firearm or weapon with 1000 feet of a school); s. 810.0975, F.S. (prohibiting trespass within a 500 foot school safety zone); and s. 893.13(1), F.S. (various subparagraphs prohibiting sale, manufacture, or delivery of drugs within specified distances of certain places).

### **III. Effect of Proposed Changes:**

The bill codifies the department's practice of measuring the distance between an offender's residence and a prohibited location in a straight line. Straight line measurement ensures that the "safety zone" around a place where children congregate is as large as possible. There are no reported judicial decisions relating to the 1000 foot requirement in probation cases, but drug offenders have contested the straight line measurement in cases where the penalty for enhancing drugs is enhanced if the offense occurs within a specified distance of a school. In all such cases, the courts have affirmed that straight line measurement is required. However, there is a concern that failure to specify the straight line measurement requirement could lead to an adverse result if, for example, the offender's residence is located across a canal from the prohibited location. Specification of the method of measurement removes the possibility of subjectivity in interpretation of the statute.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 947.1405(7)(a)2, F.S., applies to offenders on control release and includes the same 1000 foot residency restriction for control releasees who commit specified sexual crimes upon minors. Inclusion of the straight line language in s. 948.03, F.S., but not in s. 947.1405, F.S., could lead to an interpretation that the measurement for control releasees should take into account detours around buildings, water bodies and similar barriers. A similar assertion might also be made for other criminal statutes that include a distance requirement.

**VIII. Amendments:**

None.