

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1543 Probation or Community Control for a Sex Offender  
**SPONSOR(S):** Rep. Gannon  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2424

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety &amp; Crime Prevention</u>	_____	<u>Maynard</u>	<u>De La Paz</u>
2) <u>State Administration</u>	_____	_____	_____
3) <u>Public Safety Appropriations (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Section 948.03, F.S. provides standard terms of probation for persons who have pled or been found guilty of certain serious sexual offenses. One standard term of probation addresses victim contact when the victim of a sex offense is a minor under s. 948.03(5)(a)(5), F.S. This term prohibits unsupervised contact with a child under the age of 18, until the probationer has successfully completed a sex offender program. A sentencing court may authorize contact, but only with another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court.

HB 1543 provides additional clarification to the standard term of probation which provides a prohibition on contact with a minor victim until successful completion of sex offender program. The bill revises the standard term of probation where the victim is a minor to include a prohibition on starting or continuing unsupervised contact with a child under the age of 18 or living with a child under the age of 18. The bill permits a court to approve supervised contact with a child under 18 if:

- the offender has completed a sex offender treatment program
- the offender has completed an assessment of the contact risk prepared by a qualified practitioner
- an adult who is responsible for the child's welfare and who has been advised of the crime and approved by the court is present at all times with the offender is with the child
- before supervised contact may begin, the responsible adult must be provided with a safety plan that details the conditions of contact and is prepared by a qualified practitioner who is treating the offender, or has treated the offender.

The bill defines "qualified practitioner" as "a therapist licensed under s. 490.0143 or s. 491.0143, or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers."

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1543.ps.doc  
**DATE:** March 29, 2004



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Under current law, terms of probation are either standard or special. Standard terms of probation are provided for in statutes, and because they are the same in every case, these terms do not require oral pronouncement at sentencing. Special terms of probation are in addition to the statutorily mandated terms and require oral pronouncement. Violations of special terms of probation not orally pronounced will not be enforceable. Jones v. State, 661 So.2d 50 (Fla 2<sup>nd</sup> DCA 1995) (Trial court's imposition of special conditions of probation without announcing those conditions at sentencing was improper.)

Section 948.03, F.S. provides standard terms of probation for person who have pled or been found guilty of certain serious sexual offenses. These include ch. 794, F.S. (Sexual Battery), ss. 800.04, (Lewd or Lascivious Offenses), 827.071, (Use of Child in Sexual Performance), and 847.0145, F.S. (Child Porn). These terms include:

- A mandatory curfew
- If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school
- Active participation and successful completion of a sex offender program
- A prohibition on any contact with the victim
- If the victim was under 18, a prohibition on working for pay or as a volunteer at any school, day care, park, playground, or other place where children regularly congregate
- A prohibition on owning pornography
- A requirement to submit two specimens of blood to FDLE for registration in the FDLE DNA databank
- A requirement that the offender make restitution to the victim for any medical or psychological services
- Submission to a warrantless search by probation officers
- Annual polygraphs to obtain risk management information
- Maintenance of a driving log
- Prohibition against maintaining or using a post office box without permission from a probation officer
- If there was sexual contact, submission to an HIV test

In addition to these terms, there are specific provisions which are standard terms of probation regarding victim contact when the victim of a sex offense is a minor under s. 948.03(5)(a)(5), F.S. This term prohibits unsupervised contact with children under the age of 18, until the probationer has successfully completed a sex offender program, unless authorized by the sentencing court, without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court. According to the Department of Corrections, in Fiscal Year 2002-2003, there

were 1,251 offenders placed on probation and community control for the sex offenses specified in s. 948.03(5)(b), F.S.

HB 1543 provides additional clarification to the standard term of probation which provides a prohibition on contact with a minor victim until successful completion of sex offender program. The bill revises the standard term of probation where the victim is a minor to include a prohibition on starting or continuing unsupervised contact with a child under the age of 18 or living with a child under the age of 18. The bill permits a court to approve supervised contact with a child under 18 if:

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The bill defines "qualified practitioner" as "a therapist licensed under s. 490.0143 or s. 491.0143, or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers."

#### C. SECTION DIRECTORY:

Section 1. amends s. 948.03, F.S. relating to terms of sex offender probation.

Section 2. reenacts s. 775.21, F.S for the purpose of incorporation by reference.

Section 3. reenacts s. 958.03, F.S. for the purpose of incorporation by reference.

Section 4. provides an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase contracts with qualified and licensed sex offender treatment providers.

D. FISCAL COMMENTS:

The Department of Corrections anticipates no fiscal impact from this bill.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**