

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.)

Prepared By: Criminal Justice Committee

BILL: SB 1052

SPONSOR: Senators Crist and Fasano

SUBJECT: Residence of Sexual Offenders

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter/Davis	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 794.065, F.S., to prohibit persons who are convicted in another jurisdiction for committing certain sex offenses from living within 1,000 feet of a school, day care center, park, or playground if their victim was under 16 years old. Violation of the prohibition would constitute a new crime, with the level depending upon the classification of the original offense. These restrictions currently apply to offenders who are convicted of the specified offenses in Florida courts.

This bill substantially amends section 794.065 of the Florida Statutes.

II. Present Situation:

Section 794.065, F.S., prohibits persons convicted of certain sex offenses against a victim under 16 years of age from living within 1,000 feet of a school, day care center, park, or playground. The qualifying offenses are: sexual battery (s. 794.011, F.S.); lewd or lascivious offense on or in the presence of a person less than 16 years old (s. 800.04, F.S.); sexual performance by a child (s. 827.071, F.S.); and selling or buying of minors (s. 847.0145, F.S.). The statute applies to offenses committed on or after October 1, 2004.

Violation of the statute is a new crime. If the original conviction was classified as a first degree felony or higher, the violation of s. 794.065, F.S., is classified as a third degree felony; if the original conviction was classified as a second or third degree felony, the violation is classified as a first degree misdemeanor.

Because s. 794.065, F.S., refers specifically to crimes under the Florida Statutes, the restrictions do not apply to persons who committed the same or similar crimes under the laws of another state or the United States.

III. Effect of Proposed Changes:

The bill amends s. 794.065, F.S., to apply its restrictions to persons who are convicted in another jurisdiction of a crime that is similar to one of the Florida crimes specified in the statute. “Conviction of a similar offense” includes, but is not limited to, conviction in a state court, federal court, or by court martial. The restrictions would also apply if the person pled guilty or nolo contendere to the offense and received a sanction in any state or other jurisdiction. Arguably, the restriction could apply to convictions in the courts of foreign countries.

Like persons who have been convicted under Florida law, persons who are convicted of an offense that is similar to one of the specified offenses and whose victim was under 16 years old will be prohibited from living within 1,000 feet of a school, day care center, park, or playground. The qualifying offenses are: sexual battery (s. 794.011, F.S.); lewd or lascivious offense on or in the presence of a person less than 16 years old (s. 800.04, F.S.); sexual performance by a child (s. 827.071, F.S.); and selling or buying of minors (s. 847.0145, F.S.). The bill will apply to persons whose qualifying offenses are committed on or after July 1, 2005.

The penalty for violation of the statute remains unchanged. If the original conviction was classified as a first degree felony or higher, the violation of s. 794.065, F.S., will be classified as a third degree felony. If the original conviction was classified as a second or third degree felony, the new violation will be classified as a first degree misdemeanor.

The bill also amends the section to define the terms “convicted” and “conviction” to mean that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty, regardless of whether adjudication of guilt is withheld.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Any law restricting where a person can live raises the possibility of constitutional challenge, particularly if it is applied to require a person to move from a pre-existing

residence. However, the bill is not applied retroactively so as to be in violation of the prohibition against *ex post facto* application of the laws, and it does not appear to violate any other constitutionally-protected right.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would impact persons with qualifying convictions who would be restricted from living within the specified areas.

C. Government Sector Impact:

Economic and Demographic Research has stated that the impact of this bill would be indeterminate but minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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