

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1247 CS

Sexual Offenders

SPONSOR(S): Rice

TIED BILLS:

IDEN./SIM. BILLS: SB 1354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Justice Appropriations Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Burns</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 1247 modifies the conditions of supervision for a person who is on conditional release, probation or community control and has been convicted of an enumerated sexual offense. In cases where the victim was under the age of 18, the bill permits the Parole Commission or a court to approve supervised contact with a child under 18 (other than a victim) only if the following conditions are met:

- A risk assessment has been completed by a qualified practitioner at the offender's sex offender treatment program.
- Before supervised contact begins, the adult who is responsible for the child's welfare collaborates with the qualified practitioner to develop and implement a safety plan that details the acceptable conditions of contact between the offender and child.
- Supervised contact with the child is recommended by the qualified practitioner at the offender's sex offender treatment program.
- The qualified practitioner or court approves the adult who is responsible for the child's welfare and who has agreed to personally supervise the child any time the offender is with the child.
- The qualified practitioner or court determines that the supervised contact is in the best interest of the child and does not pose an undue risk to the child.
- The adult who has been approved by the qualified practitioner or court understands that he or she must personally supervise the child any time the offender is with the child.
- The adult person who is legally responsible for the welfare of the child has been advised of the nature of the crime.

The bill creates a new condition which prohibits a person under supervision from accessing the internet or other computer services until a qualified practitioner at the offender's sex offender treatment program has approved a safety plan for accessing the Internet or other computer service. This condition will apply to a releasee whose crime is committed on or after July 1, 2005, the effective date of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill restricts the activities of criminal sexual offenders while subject to conditional release, probation or community control.

B. EFFECT OF PROPOSED CHANGES:

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.¹ The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections. The Department of Corrections supervises the offender while on conditional release. For inmates convicted of certain sexual offenses² or offenses against children committed after October 1, 1995, who are subject to conditional release, section 947.1405(7)(a), F.S., requires the Commission to impose the following special conditions, in addition to any other terms and conditions it imposes:

1. Mandatory curfew;
2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, bus stop, day care center, park, playground, or other place where children regularly congregate;
3. Completion of a sex offender treatment program;
4. Prohibition on contact with the victim unless approved by the victim, the offender's therapist and the sentencing court;
5. If the victim was under the age of 18, prohibition on unsupervised contact with children unless 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.

HB 1247 modifies the special condition which prohibits contact with a child under the age of 18 (where the victim was under the age of 18) until certain conditions have been met. The bill provides that the commission may approve supervised contact with a child under the age of 18 if all of the following conditions are met³:

- A risk assessment has been completed by a qualified practitioner at the offender's sex offender treatment program.
- Before supervised contact begins, the adult who is responsible for the child's welfare collaborates with the qualified practitioner to develop and implement a safety plan that details the acceptable conditions of contact between the offender and child.

¹ Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

² Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

³ This does not apply to contact with the victim. As under current law, contact with the victim would be prohibited unless approved by the victim, the qualified practitioner treating the offender and the sentencing court.

- Supervised contact with the child is recommended by the qualified practitioner at the offender's sex offender treatment program.
- The qualified practitioner approves the adult who is responsible for the child's welfare and who has agreed to personally supervise the child any time the offender is with the child.
- The qualified practitioner determines that the supervised contact is in the best interest of the child and does not pose an undue risk to the child.
- The adult who has been approved by the commission understands that he or she must personally supervise the child any time the offender is with the child.
- The adult person who is legally responsible for the welfare of the child has been advised of the nature of the crime.

The bill creates a new condition which prohibits accessing the Internet or other computer services until a qualified practitioner at the offender's sex offender treatment program has approved a safety plan for accessing and using the Internet or other computer service. This condition will apply to a releasee whose crime is committed on or after July 1, 2005, the effective date of the bill.

The bill also removes references to "therapists" throughout the subsection and instead refers to "qualified practitioners". The bill also defines the term "qualified practitioners" to mean a therapist licensed under chapter 490 or 491, F.S. or holding equivalent licensure in another state, who is specially trained to evaluate and treat sex offenders.

Probation and community control: The Department of Correction oversees several types of supervision including probation and community control. Section 948.30, F.S., provides standard conditions of probation for persons who have pled or been found guilty of certain serious sexual offenses. The conditions specified are nearly identical to those described for offenders on conditional release. HB 1247 amends the conditions for offenders on probation or community control who have committed a sexual offense, relating to contact with a minor and access to the Internet, in the same manner as described above, relating to conditional release.

C. SECTION DIRECTORY:

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

Section 2. Amends s. 948.30, F.S., relating to terms of probation or community control.

Section 3. Reenacts s. 775.21, F.S., for the purpose of incorporation by reference.

Section 4. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections has indicated that this bill would not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action 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 & COMBINED BILL CHANGES

The Criminal Justice Committee adopted several amendments to the bill which modified the provisions relating to conditions of supervised visitation. The amendments provided that the qualified practitioner, rather than the Parole Commission is required to approve the adult who is responsible for the child's welfare and who has agreed to supervise the child and also must determine that the supervised contact is in the best interest of the child. The amendments provided that the adult responsible for the child's welfare must *personally* supervise the child. The amendments also restored language currently in law which requires that the adult who is legally responsible for the child's welfare be advised of the nature of the crime. The amendment clarifies that the qualified practitioner must approve a safety plan in order for the offender to be permitted to access the Internet. The amendments modified the definition of the term "qualified practitioner" and removed the requirement that the qualified practitioner be a member of the Association for the Treatment of Sexual Abusers.

The Justice Appropriations Committee adopted two amendments during the 4/12/05 meeting to expand the existing list of places where child sex offenders cannot work.