

# 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.)

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Prepared By: Children and Families Committee

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BILL: CS/SB 1354

SPONSOR: Children and Families Committee and Senator Fasano

SUBJECT: Sexual Offenders

DATE: April 11, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute for SB 1354 amends ss. 947.005 and 948.00s, F.S., to provide definitions for the terms “qualified practitioner,” “risk assessment,” and “safety plan.” This bill also amends ss. 947.1405 and 948.30, F.S., which pertain to sexual offenders and the terms governing their conditional release, probation, and community control. This legislation seeks to establish more protection for children when they are in supervised contact with sexual offenders whose victims were under the age of 18.

The first section of the bill applies to the Parole Commission and offenders on conditional release while the second section applies to the sentencing court and offenders on probation or community control. In both sections, stricter standards for supervised visits require that a qualified practitioner complete a risk assessment, develop a safety plan, and actually recommend to the commission or the court for the supervised contact to occur.

The Parole Commission or sentencing court may approve the offender having supervised contact with the child only if certain conditions are met and based upon the review of specified information. The commission and the court are prohibited from approving contact if such contact is not recommended by the qualified practitioner and approved of by a non-offending parent or legal guardian. However, the commission and the court may deny contact at any time.

This committee substitute also specifies the areas that must be addressed in the risk assessment report as well as requires additional information to be provided to the commission or the court. This information includes written consent by the child’s parent or legal guardian for contact with the offender and evidence that the child’s non-offending parent or guardian understands the need

for a safety plan and agrees to the provision of constant adult supervision any time the child has contact with the offender.

This committee substitute also prohibits the commission or the court from appointing a person to conduct a risk assessment or to accept a risk assessment from a person who has not demonstrated that they have met the requirements of a qualified practitioner as defined by this bill.

The committee substitute further specifies the requirements pertaining to internet access by the offender and directs the Department of Health to maintain a list of qualified practitioners.

Upon approval, this bill takes effect January 1, 2006.

This bill amends sections 947.005, 947.1405, 948.001 and 948.30, and reenacts section 775.21(3)(b) of the Florida Statutes.

## **II. Present Situation:**

Section 947.1405(7)(a), F.S., establishes the terms of conditional release supervision for offenders who have been convicted of sexual battery, lewd or lascivious offenses committed upon or in the presence of someone under 16, a sexual performance by a child, and the selling or buying of minors which includes child pornography. Similarly, s. 948.30, F.S., establishes the terms and conditions of probation or community control for offenders who violate those same statutes. In addition to any other conditions imposed, the following special conditions are imposed by the Parole Commission for sexual offenders on conditional release and by the sentencing court for sexual offenders who are on probation or community control:

- A mandatory curfew.
- If the victim was a minor, a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate.
- Active participation in and successful completion of a sex offender treatment program.
- A prohibition on having contact with the victim unless approved by the victim, the offender's therapist, and the sentencing court.
- If the victim was under 18, a prohibition against direct contact or association with children younger than 18 until the offender successfully completes a treatment program, the person responsible for the child's welfare has been advised of the nature of the crime, that adult is present during all contact or association with the child, and that adult has been approved by the commission.
- If the victim was under the age of 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 viewing, owning, or possessing pornography or obscene materials.
- A requirement that the offender submit a specimen to FDLE for registration in the FDLE DNA database.
- A requirement that the offender make restitution to the victim for any medical or psychological services.
- Submission to a warrantless search by the community control or probation officers.
- Several additional conditions that apply only to offenders placed on conditional release, probation, or community control for a crime committed on or after October 1, 1997.

### III. Effect of Proposed Changes:

#### **Qualified Practitioner**

This committee substitute seeks to amend ss. 947.1405 and 948.30, F.S., by removing the term “therapist specially trained to treat sex offenders” or “specially trained therapist” and replacing it with the term “qualified practitioner.” This bill further amends ss. 947.005 and 948.001, F.S., to specify that the term “qualified practitioner” means a psychiatrist licensed under ch. 458, F.S., a psychologist licensed under ch. 490, F.S., or a social worker, mental health counselor, or a marriage and family therapist licensed under ch. 491, F.S., who, as determined by rule of the respective boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders.

#### **Risk Assessment**

This committee substitute requires that a qualified practitioner complete a risk assessment of an offender for consideration by the parole commission or the court when deciding whether or not to approve supervised contact with a child. Sections 947.005 and 948.001, F.S., are amended to provide a definition for the term “risk assessment” specifying that the term means an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

#### **Safety Plan**

This committee substitute amends ss. 947.005 and 948.001, F.S., to provide a definition of the term “safety plan.” A “safety plan” means a written document that is prepared by a qualified practitioner, in collaboration with the sex offender, the child’s parent or legal guardian, and, when appropriate, the child, which establishes clear roles and responsibilities for each individual who is involved in any contact between the child and the sex offender.

#### **Supervised Contacts with Minors**

The bill further seeks to amend ss. 947.1405 and 948.30, F.S., by changing the conditions under which an offender might have supervised contact with a child under the age of 18 if the victim was under the age of 18. For offenders on conditional release, the Parole Commission would be permitted to provide authorization for supervised contact, and for offenders on probation or community control, the court would be permitted to approve supervised contact with the minor

with the recommendation for contact by a qualified practitioner based upon a risk assessment and if the sex offender is either currently enrolled in or has successfully completed a sex offender therapy program. The commission and court are prohibited from approving supervised contact between the sex offender and a child if such contact is not recommended by the qualified practitioner and approved by a non-offending parent or legal guardian. However, the commission and court may deny supervised contact at any time. When considering whether or not to approve contact with a child, the commission or the court must review the following:

- A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that includes the findings of the risk assessment addressing each of the following components:
  - The sex offender's current legal status;
  - The sex offender's history of adult charges with apparent sexual motivation;
  - The sex offender's history of adult charges without apparent sexual motivation;
  - The sex offender's history of juvenile charges, whenever available;
  - The sex offender's treatment history including a consultation with the sex offender's treating or most recent treating therapist;
  - The sex offender's mental status;
  - The sex offender's mental health and substance-abuse history as provided by the Department of Corrections;
  - The sex offender's personal, social, education, and work history;
  - The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;
  - A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;
  - The child's preference and relative comfort level with the proposed contact, when age-appropriate;
  - The parent's or legal guardian's preference regarding the proposed contact; and
  - The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.
- A recommendation by the qualified practitioner that is made as a part of the risk assessment report as to whether supervised contact with the child should be approved.
- A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of a risk assessment.
- A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, and the child, when age appropriate, which details the acceptable conditions of contact between the offender and the child. The safety plan must be reviewed and approved by the Department of Corrections prior to submission to the commission or the court.

- Evidence that the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the offender.

Additionally, this committee substitute prohibits the commission or the court from appointing a person to conduct a risk assessment or to accept a risk assessment from a person who has not demonstrated that they have met the requirements of a qualified practitioner as defined by this bill.

Upon approval, this bill takes effect January 1, 2006.

#### **Internet Access**

The committee substitute also prohibits a releasee whose crime was committed on or after July 1, 2005, from accessing or using the Internet or similar computer services until the qualified practitioner approves a safety plan for the offender's use of the Internet. Although existing statutory language does prohibit a sexual offender from viewing, owning, or possessing computer programs and services, it does not appear that chat rooms, e-mails, and web cameras are necessarily precluded.

The practical effect of this legislation might be to lessen the frequency with which minors have supervised contact with sexual offenders. According to the Parole Commission, there are 368 sexual offenders on conditional release. The Department of Corrections states that as of January 31, 2005, there were 8,238 sexual offenders on probation or community control.

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

Municipality/County Mandates Restrictions:

None.

Public Records/Open Meetings Issues:

None.

Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

Tax/Fee Issues:

None.

Private Sector Impact:

None.

Government Sector Impact:

There will be an undetermined fiscal impact on the Department of Health to develop rules specifying the requirements that must be met by qualified practitioners.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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

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## **VIII. Summary of Amendments:**

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