

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 1354

SPONSOR: Senator Fasano

SUBJECT: Sexual Offenders

DATE: March 17, 2005

REVISED: 03/22/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Fav/2 amendments
2.			CF	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill 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 proposed 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” must complete a risk assessment and safety plan and actually recommend that the supervised visit occur. Additionally, the Parole Commission or sentencing court must approve the responsible supervising adult and determine that the supervised contact is in the best interest of the child. The adult responsible for the child’s welfare must supervise the child anytime the child is with the offender and know what contact and conditions are acceptable between the offender and the child.

This bill amends sections 947.1405 and 948.30, and reenacts section 775.21(3)(b), 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 bill seeks to similarly 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” who would treat the offender in the sexual offender treatment program. The qualified practitioner is intended to be a therapist who is more qualified to treat sexual offenders than what is currently described in statute. The qualified practitioner would be a therapist licensed under s. 490.0141 or s. 491.0143, F.S., or someone who holds an equivalent license in another state who is specially trained to evaluate and treat sex offenders. The definition also requires that the practitioner be a clinical member of the Association for the Treatment of Sexual Abusers or someone who has the equivalent training and experience.

Supervised Contacts with Minors

The bill further seeks to similarly 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 if:

- A risk assessment is first completed by a qualified practitioner from the offender’s treatment program;
- The adult responsible for the minor’s welfare works with the qualified practitioner to develop a safety plan which details the acceptable conditions of contact between the offender and the child;
- The supervised contact is recommended by the qualified practitioner;
- The commission or court approves the adult responsible for the child’s welfare and who has agreed to supervise the child when the offender is with the child;
- The commission or court determines that the contact is in the best interest of the child and does not pose an undue risk to the child; and
- The adult approved by the commission or court understands that he or she must supervise the child when the offender is with the child.

This bill would change existing law for supervised contact with a minor child by:

- Requiring the qualified practitioner to complete a risk assessment of the offender before the visit could occur;
- Placing more responsibility on the supervising adult as to what the boundaries are for the visit with the minor child by developing a safety plan with the qualified practitioner;

- Establishing that a supervised contact with the child is recommended by the qualified practitioner;
- Requiring that the adult approved by the commission or the court understand that he or she must supervise the child during the visit and not merely be present; and
- Requiring the commission or court to determine that the supervised contact is in the best interest of the child and does not pose an undue risk to the child.

Internet Access

The bill 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 therapist 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:**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:

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:

Barcode 745206 by Criminal Justice:

Substitutes the term “qualified practitioner” for the Parole Commission in ss. 947.1405(7)(a)(5)(d),(e), and (f), F.S., and establishes that the practitioner, not the commission, will be responsible for approving the adult responsible for the child’s welfare, and determining that the supervised contact is in the best interest of the child; inserts the word “accessing” to prohibit the sexual offender from accessing obscenity or pornography by phone, media, or computer; clarifies that the qualified practitioner must implement a safety plan before the offender may use the Internet; deletes requirement that the qualified practitioner must complete a risk assessment before the offender is allowed to access the Internet; deletes specific references to licensing sections and replaces them with broader references to chapters 490 and 491, F.S.; and deletes the requirement that the qualified practitioner be a clinical member of the Association for the Treatment of Sexual Abusers.

Barcode 923858 by Criminal Justice:

Amends proposed language to clarify that the qualified practitioner must implement a safety plan before the offender may access the Internet; deletes language that a risk assessment must be completed before the offender is allowed to access the Internet; deletes specific references to licensing sections and replaces them with broader references to chapters 490 and 491, F.S.; and deletes the requirement that the qualified practitioner be a clinical member of the Association for the Treatment of Sexual Abusers.