

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1599 CS                      Residence of Sexual Offenders  
**SPONSOR(S):** Brutus  
**TIED BILLS:**                                **IDEN./SIM. BILLS:** SB 1052

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Justice Appropriations Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

During the 2004 session, the legislature created s. 794.065, F.S., which provides that it is unlawful for a person who has been convicted of a specified sexual battery or lewd or lascivious offense in which the victim of the offense was less than 16 years of age to reside within 1,000 feet of any school, day care center, park or playground. The severity of the offense depends of the felony degree of the prior sexual battery or lewd or lascivious offense.

HB 1599 amends s. 794.065, F.S., to modify the prior sexual battery or lewd or lascivious offenses listed to include "a similar offense in another jurisdiction". The bill also provides that a conviction for a similar offense includes, but is not limited to, a conviction by a state or federal court or military tribunal and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. As a result, a person who is convicted or pleads guilty or nolo contendere to a specified sexual offense in a court of this state or any other state, a federal court or a military court will commit a felony if he or she resides within 1,000 feet of any school, day care center, park or playground.

This bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government: The bill will prohibit a person who is convicted of certain sex offenses from living within 1,000 feet of a school, day care center, park or playground for the duration of his or her life.

#### B. EFFECT OF PROPOSED CHANGES:

During the 2004 session, the legislature passed CS/SB 120<sup>1</sup> which created s. 794.065, F.S. Section 794.065, F.S., provides that it is unlawful for a person who has been convicted of a specified sexual battery or lewd or lascivious offense<sup>2</sup>, regardless of whether adjudication was withheld, in which the victim of the offense was less than 16 years of age, to reside within 1,000 feet of any school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony. The provisions of the section apply to a person convicted of the sexual offense on or after October 1, 2004.

HB 1599 amends s. 794.065, F.S., to modify the prior sexual battery or lewd or lascivious offenses listed to include "a similar offense in another jurisdiction". The bill also defines the term "convicted" or "conviction" to mean there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication was withheld. The bill also provides that a conviction for a similar offense includes, but is not limited to, a conviction by a state or federal court or military tribunal, including a court-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. The bill further provides that a sanction includes, but is not limited to, a fine; probation; community control; parole; conditional release; control release; or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 794.065, F.S., relating to unlawful place of residence for persons convicted of certain sex offenses.

Section 2. Provides effective date of July 1, 2005.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

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<sup>1</sup> See 2004-391, Laws of Florida.

<sup>2</sup> Includes are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

2. Expenditures:

The Criminal Justice Impact Conference has not met yet to determine the prison bed impact of the new offenses. A similar bill passed last session, HB 87, was reviewed by the conference and determined to have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will restrict the choice of housing options available for certain individuals.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The statute that this bill amends was enacted during the 2004 session and restricts the residence of a person who committed a sexual offense after October 1, 2004. As such, there is no reported decision challenging the constitutionality of the provision. There is no case law in Florida on the constitutionality of restricting the residence of a person who is not under the supervision of the Department of Corrections based on a prior criminal conviction.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 12, 2005, the Justice Appropriations Committee adopted one amendment to this bill offered by Rep. Joyner. The amendment requires a sexual offender to report in person to a Florida Department of Law Enforcement office or to a sheriff's office in the county in which the offender is employed. This notification must be done within 48 hours of obtaining or changing employment. The bill was reported favorably as a committee substitute.

On April 22, 2005, the Justice Council adopted an amendment, sponsored by Rep. Joyner, to remove the language that was placed in the bill in the Justice Appropriations Committee.