

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 339 CS

Sexual Predators

SPONSOR(S): Brandenburg

TIED BILLS:

IDEN./SIM. BILLS: SB 508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Judiciary Committee</u>	<u></u>	<u>Hogge</u>	<u>Hogge</u>
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 339 amends the definition of the terms "permanent residence" and "temporary residence" which apply to the sexual predator and sexual offender statutes. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 or more days, rather than 14, in the aggregate during any calendar year and which is not the person's permanent residence. This will have the affect of reducing the amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote limited government: The bill will require a sexual predator or sexual offender to report a new residence to law enforcement when he or she has been residing at a location for 5 days, rather than 14 days.

B. EFFECT OF PROPOSED CHANGES:

Background:

Sexual Predator Definition: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a "sexual predator" if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. kidnapping or false imprisonment¹ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;²
 - c. lewd or lascivious offenses;³
 - d. selling or buying of minors for child pornography;⁴ or
 - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, one of the following offenses:
 - a. kidnapping, false imprisonment or luring or enticing a child⁵ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;⁶
 - c. procuring a person under the age of 18 for prostitution;⁷
 - d. lewd or lascivious offenses;
 - e. lewd or lascivious battery on an elderly person;⁸
 - f. promoting sexual performance by a child;⁹
 - g. selling or buying of minors for child pornography; or
 - h. a violation of a similar law of another jurisdiction.¹⁰

Registration of Residence: If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially

¹ s. 787.01, F.S. or s. 787.02, F.S.,

² See chapter 794, F.S.

³ s. 800.04, F.S.

⁴ s. 847.0145, F.S.

⁵ s. 787.025, F.S.

⁶ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

⁷ s. 796.03, F.S.

⁸ s. 825.1025(2)(b), F.S.

⁹ s. 827.071, F.S.

¹⁰ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

register in person at a Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

The term "permanent residence" is defined as a place where the person abides, lodges, or resides for 14 or more consecutive days. The term "temporary residence" is defined as a place where the person abides, lodges or resides for a period of 15 or more days in the aggregate during any calendar year and which is not the person's permanent residence. For a person whose permanent residence is not in the state, the term includes a place where the person is employed, practices a vocation or is enrolled as a student for any period of time. The term also includes a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.¹¹ A sexual predator's failure to comply with registration requirements is a third degree felony.¹²

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred.¹³

A sexual offender is required to report and register in a manner similar to a sexual predator. The definition of the terms "temporary residence" and "permanent residence" are the same as those under the sexual predator statute.¹⁴ Failure of a sexual offender to comply with the registration requirements is a third degree felony.¹⁵

Effect of HB 339

HB 339 amends the definition of the terms "permanent residence" and "temporary residence" for purposes of the sexual predator and sexual offender registration requirements. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 (rather than 14) or more days in the aggregate during any calendar year and which is not the person's permanent residence. This will reduce the

¹¹ s. 775.21(8), F.S.

¹² s. 775.21(10), F.S.

¹³ Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense: kidnapping, false imprisonment or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent; sexual battery; procuring a person under the age of 18 for prostitution; lewd or lascivious offenses; lewd or lascivious battery on an elderly person; promoting sexual performance by a child; selling or buying a minors for child pornography; selling or showing obscenity to a minor; using a computer to solicit sexual conduct of or with a minor; transmitting child pornography; transmitting material harmful to minors; violating a similar law of another jurisdiction.

¹⁴ s. 943.0435(1)(c), F.S.

¹⁵ s. 943.0435(9)(a), F.S.

amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement. As a result, law enforcement will be able to more quickly identify where sexual predators and sexual offenders are living. As under current law, for a person whose permanent residence is not in the state, a temporary residence will be defined as a place where the person is employed, practices a vocation or is enrolled as a student for any period of time in the state.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S.; amending definitions.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The FDLE estimates that the bill will have a non-recurring impact of \$70,600 on the department. According to the department's fiscal analysis:

Cost estimates reflect documented notification to all registrants within the Florida sexual offender database (currently over 35,000); reprinting and distribution of all related registration, notice of responsibility forms and related documents and system adaptations and reporting requirements.

Notification and documentation to registrants:	\$35,500
Update and distribute forms:	\$22,700
Criminal Justice Training	\$3,400
System Programming:	\$9,000
Total:	\$70,600

The bill makes no provision for funding to cover these expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that this bill requires a person to register address changes more frequently, it may have a fiscal impact on a sexual predator or sexual offender.

D. FISCAL COMMENTS:

See above.

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:

The bill contains no appropriation to cover the fiscal impact anticipated by the FDLE. The bill could be amended to include a specific appropriation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill removed part of the definition of temporary residence relating to a person whose permanent residence is not in the state but who works or is enrolled as a student in the state. The Criminal Justice Committee adopted an amendment which reinstated this language.