

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 339 CS  
**SPONSOR(S):** Brandenburg  
**TIED BILLS:**

Sexual Predators

**IDEN./SIM. BILLS:** SB 508

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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>9 Y, 0 N, w/CS</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>

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### SUMMARY ANALYSIS

The bill would make numerous changes to the laws relating to sexual offenders and predators. Among its many provisions, the bill would:

- revise the meaning of operative terms for purposes of sexual offender/predator registration.
- preempt local government residency exclusions and supersede/nullify those in existence prior to October 1, 2006, and extend state-imposed residency exclusions from 1000 to 1500 feet.
- provide that the inability of a sex offender or predator on probation or conditional release to locate a residence in compliance with the residency exclusion is no defense to a violation of probation or conditional release.
- include libraries among the list of prohibited employers of sexual offenders or predators with child victims.
- extend the current requirement for electronic monitoring for certain sex offenses to two additional offenses—kidnapping and false imprisonment—when the offense involves child victims.
- revise a special condition of probation and conditional release subjecting releasees and probationers to warrantless searches, to include searches through electronic monitoring for certain offenders.
- require judges to order electronic monitoring if they find a violation of probation even if no revocation.
- make the sex-related offenses of child kidnapping, false imprisonment of a child, sexual performance by a child, and selling or buying minors conditional release eligible.
- prohibit the substitution of community supervision for conditional release supervision for sexual offenders and predators placed on both conditional release supervision and community supervision and authorize the Parole Commission to modify the terms of conditional release supervision at any time.

Because the bill is likely to result in more sexual offenders and predators being placed on electronic monitoring, the state would experience a negative recurring fiscal impact. However, except for a nonrecurring negative impact of \$70,600 resulting from changes in the registration provisions, the impact is indeterminate because there is no readily-available way to estimate the number of additional predators and offenders that might end up on electronic monitoring as a result of the policy revisions reflected in this bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** 4/10/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote limited government—The bill will require sexual offenders/predators 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. Additionally, the bill provides increased opportunities for subjecting these offenders/predators to electronic monitoring.

Safeguard individual liberty—The bill limits employment opportunities for sexual offenders/predators and subjects them to increased opportunities for electronic monitoring. However, these offenders/predators are in many instances already under governmental supervision or subject to supervision and infringement of their liberty with regard to such life activities as choosing a residence and a place of employment. Any infringement is intended to safeguard the liberty of the public by increasing their security through increased personal accountability for sexual offenders/predators.

Empower families—Increased accountability for sexual offenders/predators and empowers families by increasing their security which increases their ability to function as families.

#### B. EFFECT OF PROPOSED CHANGES:

##### General Background

Sexual predators: 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 imprisonment<sup>1</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>2</sup>
  - c. lewd or lascivious offenses;<sup>3</sup>
  - d. selling or buying of minors for child pornography;<sup>4</sup> 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 child<sup>5</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>6</sup>
  - c. procuring a person under the age of 18 for prostitution;<sup>7</sup>
  - d. lewd or lascivious offenses;
  - e. lewd or lascivious battery on an elderly person;<sup>8</sup>
  - f. promoting sexual performance by a child;<sup>9</sup>

<sup>1</sup> Fla. Stat. ss. 787.01 or 787.02, F.S. (2005).

<sup>2</sup> See chapter 794, F.S. (2005).

<sup>3</sup> Fla. Stat. s. 800.04, F.S. (2005).

<sup>4</sup> Fla. Stat. s. 847.0145, F.S. (2005).

<sup>5</sup> Fla. Stat. s. 787.025, F.S. (2005).

<sup>6</sup> Excluding Fla. Stat. ss. 794.011(10) and 794.0235 (2005), except under the “second strike” provision.

<sup>7</sup> Fla. Stat. s. 796.03, F.S. (2005).

<sup>8</sup> Fla. Stat. s. 825.1025(2)(b) (2005).

- g. selling or buying of minors for child pornography; or
- h. a violation of a similar law of another jurisdiction.<sup>10</sup>

As of April 7, 2006, there were 5,789 sexual predators on the state registry.

### Sexual offenders

For purposes of the registration requirement, sexual offenders means<sup>11</sup> a person convicted of committing, or attempting to commit, any of the following qualifying offenses proscribed in the following Florida Statutes:

- s. 787.01 (kidnapping where victim is minor and defendant is not the victim's parent).
- s. 787.02 (false imprisonment where victim is minor and defendant is not the victim's parent).
- s. 787.025 (luring or enticing a child).
- Ch. 794 (sexual battery offenses).<sup>12</sup>
- s. 796.03 (procuring a person under the age of 18 for prostitution).
- s. 800.04 (lewd or lascivious offenses).
- s. 825.1025 (lewd or lascivious battery on an elderly person).
- s. 827.071 (promoting sexual performance by a child).
- s. 847.0133 (selling or showing obscenity to a minor).
- s. 847.0135 (using a computer to solicit sexual conduct of or with a minor).
- s. 847.0137 (transmitting of child pornography).
- s. 847.0138 (transmitting of material harmful to minors).
- s. 847.0145 (selling or buying minors).
- A violation of a similar law of another jurisdiction.

As of April 7, 2006, there were 31,825 sexual offenders on the state registry.

### **Effect of HB 339**

#### Registration

The bill would:

--revise the definition of the terms "permanent residence" and "temporary residence" for purposes of sexual predator and sexual offender registration requirements. A permanent residence would be

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<sup>9</sup> Fla. Stat. s. 827.071 (2005).

<sup>10</sup> 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 [Fla. Stat. ss. 847.0133 or 847.0135 (2005)].

<sup>11</sup> Fla. Stat. 943.0435(1)(a) (2005).

<sup>12</sup> Excluding Fla. Stat. ss. 794.011(10) and 794.0235 (2005).

defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days as under current law. A temporary residence would 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.

*[Currently, sexual predators must register within 48 hours after establishing permanent or temporary residence. A "permanent residence" is a place where the person abides, lodges, or resides for 14 or more consecutive days while a "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. 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. 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. A sexual predator's failure to comply with registration requirements is a third degree felony.]*

*Sexual offenders are 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. The failure of a sexual offender to comply with the registration requirements is a third degree felony.]*

--add libraries (whether public or private) to the list of entities that law enforcement must notify when a sexual predator establishes a residence.

*[Currently, law enforcement agencies must notify schools and day care centers within a 1-mile radius of the presence of the residence of a sexual predator.<sup>13</sup>]*

#### Residency exclusions

The bill would:

--preempt local government residency exclusions and supersede/nullify those in existence prior to October 1, 2006.

*[Over the past year, a large number of Florida cities and counties have passed their own residency exclusions. Distances vary from 100 feet to as much as 3000 feet,<sup>14</sup> and the benchmarks include everything from schools to churches to beaches. A recent survey indicated that at least 53 cities and 3 counties had imposed a residency exclusion. Ordinances were pending in an additional 17 communities.]*

--include residency exclusions among the laws a judge may not exempt a sexual predator from as part of a court order.

*[Currently, the list includes the requirements for sexual predator designation and registration.]*

--extend, from 1000 feet to 1500 feet, the residency exclusion for persons committing certain specified sexual offenses on or after October 1, 2006, and the residency exclusion applicable to the terms and conditions of probationers and conditional releasees committing certain specified offenses after October 1, 2006, and add libraries to the list of landmarks to which the residency exclusion would apply. The bill would apply the same method for calculating the distance as that currently found in the exclusion applicable to probationers. It also would add two additional offenses to the list of offenses for which an offender may be subjected to a residency exclusion.

<sup>13</sup> Fla. Stat. s. 775.21(7) (2005).

<sup>14</sup> The vast majority, 47 of 56, impose a 2500 feet exclusion zone.

*[Since 2004, it has been unlawful for a person convicted of certain<sup>15</sup> specified sexual offenses on or after October 1, 2004, against a child under the age of 16 to live within 1,000 feet of a school, day care center, park or playground.<sup>16</sup> A violation of this residency exclusion is punishable as a third degree felony or first degree misdemeanor depending on the severity of the underlying offense.<sup>17</sup> Additionally, probationers<sup>18</sup> and conditional releasees<sup>19</sup> convicted of specified sexual offenses are prohibited from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate, if the victim was under the age of 18, as a mandatory special condition of their probation or conditional release.*

*Current law specifies that the distance must be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, day care center, park, playground, or other place where children congregate and may not be measured by a pedestrian route or automobile route.<sup>20</sup>*

--provide that given the compelling state interest in protecting the public from sexual offenders and predators, that in a hearing involving an alleged violation of probation or conditional release for failure to comply with the residency exclusion, the inability of the probationer or releasee to locate a residence in compliance with the residency exclusion shall not be a defense to the finding of a violation of probation or conditional release.

#### Employment restrictions

The bill would add libraries to the list of prohibited places of employment as a separate criminal offense under ch. 775, F.S., for certain sexual predators (i.e., those whose victims were minors) and as violation of a special term of conditional release under ch. 947, F.S. (i.e., those whose victims were under 18).

*[Currently, the list of prohibited places of employment constituting a separate criminal offense under ch. 775, F.S., punishable as a third degree felony, includes a business, school, day care center, park, playground, or other place where children regularly congregate.<sup>21</sup> In the case of conditional release, this restriction is imposed as a mandatory special condition of conditional release.<sup>22</sup> With regard to probation, the current list of prohibited places includes all of those currently applicable to ch. 775, F.S., and conditional release, but also specifically includes zoos, theme parks, malls, and pet stores.<sup>23</sup>*

#### Electronic monitoring

The bill would:

--extend the current requirement that the Parole Commission require electronic monitoring for certain sex offenses to two additional offenses—kidnapping and false imprisonment—when the offense involves child victims.<sup>24</sup> This would also be made applicable to probationers.

<sup>15</sup> Fla. Stat. ss. 794.011, 800.04, 827.071 and 847.0145 (2005).

<sup>16</sup> Fla. Stat. s. 794.065(1) (2005).

<sup>17</sup> Fla. Stat. s. 794.065(2) (2005).

<sup>18</sup> Fla. Stat. s. 948.30(1)(b) (2005).

<sup>19</sup> Fla. Stat. s. 947.1405(7)(a)2.c. (2005).

<sup>20</sup> Fla. Stat. s. 948.30(1)(b) (2005).

<sup>21</sup> Fla. Stat. s. 775.21(10)(b) (2005).

<sup>22</sup> Fla. Stat. s. 947.1405(7)(a)6. (2005).

<sup>23</sup> Fla. Stat. s. 948.30(1)(f) (2005).

<sup>24</sup> Fla. Stat. s. 787.01 (kidnapping) and s. 787.02 (false imprisonment) (2005).

--revise a special condition of probation and conditional release subjecting releasees and probationers to warrantless searches, to include searches "through electronic monitoring or other means" for those convicted of an offense under 775.21(4)(a)1.<sup>25</sup>

--require judges to order electronic monitoring not only when they revoke the probation of a sex offender or predator following a violation of probation (as under current law), but also order it when there is a violation even if they do not revoke probation.

[Currently, the requirement that judges order electronic monitoring for sex offender probationers applies when a judge revokes the probation of a sex offender or predator following a violation of probation. It is not required in those situations where a judge finds a violation, but chooses not to revoke probation.]

### Conditional release

The bill would:

--make four additional sex-related offenses conditional release eligible, two of which are offenses for which electronic monitoring is required under the Jessica Lunsford Act. The four are kidnapping of a child,<sup>26</sup> false imprisonment<sup>27</sup> of a child, sexual performance by a child,<sup>28</sup> and selling or buying minors.<sup>29</sup>

*[Under the Jessica Lunsford Act, two of the four—sexual performance by a child and selling or buying minors—are offenses requiring the Parole Commission to impose electronic monitoring, yet they have not been included as a conditional release-eligible offense. Therefore, the Commission has no authority over these convicted of a violation of these two crimes.]*

--prohibit the substitution of community supervision (i.e., probation) for conditional release supervision for sexual predators placed on both conditional release supervision and community supervision.

--expressly authorize the Parole Commission to modify the terms of conditional release supervision at any time.

--prior to a judge releasing a sex offender with or without bail after a violation of probation, require a judge to find the probationer "poses no danger" to the public.

[Currently, the court must find that the probationer "is not a danger" to the public. It adds as a factor for the judge to consider in making that assessment "whether the probationer is subject to electronic monitoring."]

### C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act; revising definitions, legislative findings, and penalties.

Section 2. Creates s. 775.215, F.S., providing for preemption of local government residency exclusions and repeal of existing exclusions.

Section 3. Amends s. 775.24, F.S., relating to the duty of the court to uphold certain laws governing sexual predators and offenders.

<sup>25</sup>

<sup>26</sup> Fla. Stat. s. 787.01 (kidnapping) (2005).

<sup>27</sup> Fla. Stat. s. 787.02 (false imprisonment) (2005).

<sup>28</sup> Fla. Stat. s. 827.071 (promoting sexual performance by a child) (2005).

<sup>29</sup> Fla. Stat. s. 847.0145 (2005).

Section 4. Amends s. 794.065, F.S., relating to unlawful place of residence for persons convicted of certain sex offenses; revising the terms of a residency exclusion and making it applicable prospectively.

Section 5. Amends s. 947.1405, F.S., relating to the conditional release program; including additional offenses as conditional release eligible offense, prohibiting the substitution of community supervision for conditional release supervision when a predator or offender is subject to both, permitting the Parole Commission to modify terms and conditions of supervision at any time, revising an existing residency exclusion, including electronic monitoring as a form of warrantless search, and requiring electronic monitoring under certain circumstances.

Section 6. Amends 947.141, F.S., relating to violations of conditional release; prohibiting a conditional releasee from raising his or her inability to find a residence in compliance with the residency exclusion as a defense to an alleged violation of a residency exclusion.

Section 7. Amends 948.06, F.S., relating to violation of probation or community control.

Section 8. Amends s. 948.063, F.S., relating to violations of probation by designated sexual offenders or predators; providing for electronic monitoring when a violation occurs regardless of whether or not the court revokes probation; prohibiting a probationer from raising his or her inability to find a residence in compliance with the residency exclusion as a defense to an alleged violation of a residency exclusion.

Section 9. Amends s. 948.30, F.S., relating to additional terms of probation for certain sex offenses; revising an existing residency exclusion and applying it prospectively, including electronic monitoring as a form of warrantless search, and requiring electronic monitoring for additional sex-related offenses.

Section 10. Provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

Because the bill is likely to result in more sexual offenders and predators being placed on electronic monitoring, the state would experience a negative recurring fiscal impact. However, the impact is indeterminate because there is no readily-available way to estimate the number of additional predators and offenders that might end up on electronic monitoring as a result of the policy revisions reflected in this bill.

The Florida Department of Law Enforcement estimates that the provisions of the bill redefining temporary and permanent residence for registration purposes 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; 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

Staff has requested a revised fiscal impact to reflect the numerous changes to the CS reported out by the Criminal Justice Committee.

**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:**

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:**

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**

The Judiciary Committee amended the bill to include a number of other provisions and reported it out as a CS. These include the following additional provisions which:



- preempt local government residency exclusions and supersede/nullify those in existence prior to October 1, 2006, and extend state-imposed residency exclusions from 1000 to 1500 feet.
- provide that the inability of a sex offender/predator on probation or conditional release to locate a residence in compliance with the residency exclusion is no defense to a violation of probation or conditional release.
- include libraries among the list of prohibited employers of sexual offenders/predators with child victims.
- extend the current requirement for electronic monitoring for certain sex offenses to two additional offenses—kidnapping and false imprisonment—when the offense involves child victims.
- revise a special condition of probation and conditional release subjecting releasees and probationers to warrantless searches, to include searches through electronic monitoring for certain offenders.
- require judges to order electronic monitoring if they find a violation of probation even if no revocation.
- make the sex-related offenses of child kidnapping, false imprisonment of a child, sexual performance by a child, and selling or buying minors conditional release eligible.
- prohibit the substitution of community supervision for conditional release supervision for sexual offenders/predators placed on both conditional release supervision and community supervision and authorize the Parole Commission to modify the terms of conditional release supervision at any time.

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.