HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 Residence of Sexual Offenders and Predators
SPONSOR(S): Goldstein
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

During the 2004 session, section 794.065, F.S. was created which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The bill substantially amends this section of statute to define a "restricted sex offender" as a person who has been convicted one of a larger list of enumerated sexual offenses (occurring after October 1, 2006) where the victim was under the age of 18 and the offender was 18 or older. The bill makes it unlawful for a restricted sex offender to reside within 2,500 feet of any school, public school bus stop, day care center, park, playground or other place where children regularly congregate. The bill provides that a restricted sex offender will not be prohibited from continuing to reside at his or her residence solely because a school, public school bus stop, day care center, park, playground or other place where children regularly congregate is built or established within 2,500 feet of that residence after the offender has established residence.

The bill also amends the sexual predator, probation and conditional release statutes to incorporate similar residency restrictions.

The bill provides that nothing shall prevent any county or municipality from enacting an ordinance relating to restrictions as the location of the residence of sexual offenders provided that the restrictions are identical to those in the bill. An ordinance may differ as to the offenses that might subject an offender to residence restrictions.

The bill provides that a landlord or owner of a residential dwelling unit may not knowingly rent or lease a residential dwelling unit located within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate if a prospective tenant is a restricted sex offender who intends to occupy the unit unless the landlord or owner can establish that, prior to rental or lease, he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender intending to occupy the unit. A violation of this provision will be a second degree misdemeanor.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits people who have been convicted of specified sexual offenses from living within 2,500 feet of certain locations. The bill prohibits landlords or owners from leasing or renting residential dwelling units to certain people.

Safeguard individual liberty: The bill will prohibit certain people from living in currently lawful locations.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator Registration*:* As of November 17, 2005, there were 5,492 registered sexual predators in the state. 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[1] 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 a 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 child[5] 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 a minors for child pornography; or
    h. a violation of a similar law of another jurisdiction.[10]

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony.

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[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.]

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the 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 register in person at an 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.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, 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.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. 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] A sexual predator is required to maintain registration for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding. A sexual predator who was designated as a sexual predator by a court before October 1, 1998 and who has been released from confinement or supervision for at least 10 years and has not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit where the sexual predator resides for removal of the sexual predator designation. For a person who was designated a sexual predator on or after October 1, 1998, a 20 year waiting period applies. For a person who was designated a sexual predator on or after September 1, 2005, a 30 year waiting period applies.

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders registered in the state. 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 and whether the person has previously been convicted of a sexual offense. 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:

1. kidnapping, false imprisonment or luring or enticing a child[13] where the victim is a minor and the defendant is not the victim's parent;
2. sexual battery;[14]
3. procuring a person under the age of 18 for prostitution;[15]

[11] s. 775.21(8), F.S.
[12] s. 775.21(10), F.S.
[13] s. 787.025, F.S.
[14] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[15] s. 796.03, F.S.

4. lewd or lascivious offenses;
5. lewd or lascivious battery on an elderly person;[16]
6. promoting sexual performance by a child;[17]
7. selling or buying a minors for child pornography;
8. selling or showing obscenity to a minor;[18]
9. using a computer to solicit sexual conduct of or with a minor;[19]
10. transmitting child pornography;[20]
11. transmitting material harmful to minors;[21]
12. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

Residency restrictions:

Unlawful place of residence for persons convicted of certain sex offenses: Before the 2004 legislative session, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.[22] In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S. was created[23] which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense[24], against a victim under the age of 16 from living within 1,000 feet of a 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.

In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. Generally, the ordinances appear to be modeled after section 794.065, F.S. but extend the distance from 1,000 feet to 2,500 feet. Many of the ordinances also prohibit an offender from living within 2,500 feet of places such as libraries, churches and bus stops that are not included in the state statute. By request of the staff of the Judiciary Committee, the Legislative Committee on Intergovernmental Relations surveyed 321 municipalities and all 67 counties to determine whether they had passed an ordinance restricting the residence of sexual offenders. As of October 17, 2005, of the 153 municipalities that responded, 50 municipalities indicated that they had passed ordinances and 14 had pending proposed ordinances. Of the 44 counties that responded, two had passed ordinances and 5 had pending proposed ordinances.

The bill significantly amends s. 794.056, F.S.. The bill retains the existing language but changes the distance from 1,000 feet to 2,500 feet.

[16] s. 825.1025(2)(b), F.S.
[17] s. 827.071, F.S.
[18] s. 847.0133, F.S.
[19] s. 847.0135, F.S.
[20] s. 847.0137, F.S.
[21] s. 847.0138, F.S.
[22] In cases in which the victim was a minor, a sexual predator is prohibited from *working* in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.
[23] See 2004-391, Laws of Florida.
[24] Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

The bill defines the term "restricted sex offender" to mean a person convicted of a felony violation of any statute listed in s. 943.0435(1)(a)1.,F.S[25]., (which contains the sexual offender qualifying offenses), or any similar offense committed in the state under a prior statute number or any similar offense in another jurisdiction that would be a felony if committed in the state where the victim of the offense was under the age of 18 at the time of the offense and the offender was 18 years of age or older or the offender was under 18 but was prosecuted as an adult. This applies to a person convicted of a qualifying offense on or after October 1, 2006.

The bill makes it unlawful for a person who is a restricted sex offender to reside within 2,500 feet of any school, public school bus stop, day care center, park, playground, or other place where children regularly congregate. If the restricted sex offender's qualifying offense was a first degree felony or higher, a violation of the residency restriction will be a third degree felony, punishable by up to five years in prison. If the restricted sex offender's qualifying offense was a second or third degree felony, a violation of the residency restriction will be a first degree misdemeanor, punishable by up to one year in county jail.

The bill provides that a restricted sex offender will not be prohibited from continuing to reside at his or her residence solely because a school, public school bus stop, day care center, park, playground or other place where children regularly congregate is built or established within 2,500 feet of that residence after the offender has established residence.

The bill sets forth the method by which the distance from an offender's residence to a particular location will be measured. The bill defines the term "within 2,500 feet" to mean a distance measured in a straight line from the outer boundary of the real property upon which the residential dwelling unit of the restricted sex offender is located. The distance may not be measured by a pedestrian route or automobile route, but instead must be measured as the shortest straight line between the two points without regard to any intervening structures or objects. Under those circumstances in which the residential dwelling unit of the restricted sex offender is within a cooperative, condominium, or apartment building, the parcel of real property shall consist of the parcel or parcels of real property upon which the cooperative, condominium or apartment building that contains the residential dwelling unit of the restricted sex offender is located.

Probation and community control: Currently, an offender who is on probation or community control for a specified sexual offense[26] and therefore supervised by the Department of Corrections, is 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.[27]

HB 91 provides that for probationers and community controllees whose crime was committed after October 1, 2006, and who are placed under supervision for a specified sexual offense, the court must impose a prohibition on living within *2,500* feet of the above places as well as public school bus stops. Unlike current law, this requirement will apparently apply regardless of whether the victim was under the age of 18.

Further, the bill changes the manner in which the distance from an offender's residence to a specified location will be calculated. 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,

[25]The following offenses are listed in s. 943.0435(1)(a)1: s. 787.01 (kidnapping), s. 787.02 (false imprisonment), s. 787.025 (luring or enticing a child), chapter 794 (sexual battery offenses), 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;

[26] s. 948.30(1)(b), F.S. The specified offenses include sexual battery offenses (chapter 794), lewd or lascivious offenses (s. 800.04, F.S), promoting sexual performance by a child (s. 827.071, F.S.) and selling or buying minors for child pornography (s. 847.0145, F.S.)

[27] Section 948.30(1)(b), F.S.

playground, or other place where children congregate and may not be measured by a pedestrian route or automobile route.[28] The bill specifies that the distance will be measured as set forth in s. 794.065, F.S., discussed above. If the offender's residence is in an apartment complex, the Department of Corrections currently measures the distance from the front or back door of the offender's dwelling unit. The bill will require that the distance be measured from the outer boundary of the real property on which the offender's residential dwelling unit is located.

Conditional release: The conditional release program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.[29] The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[30] The Department of Corrections supervises the offender while on conditional release. For inmates convicted of certain sexual offenses[31] or offenses against children, who are subject to conditional release, section 947.1405(7)(a), F.S., also requires the Commission to impose a list of conditions including a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop or other place where children regularly congregate.[32]

The bill changes the 1,000 feet restriction to 2,500 feet. The bill provides that beginning October 1, 2006, the commission may not approve a residence for a releasee that is located within 2,500 feet of a location listed above. The bill further provides that if, on October 1, 2006, any public school bus stop is located within 2,500 feet of the existing residence of a releasee, a sexual predator, a sexual offender or a restricted sex offender, the school district must relocate the school bus stop and thereafter, may not establish or relocate a bus stop within 2,500 feet of such a residence.

Sexual predator residency: HB 91 amends the sexual predator law to provide that a sexual predator may not establish or maintain a permanent[33] or temporary[34] residence within 2,500 feet of a school, day care center, park, playground, public school bus stop[35] or other place where children regularly congregate. A violation of this provision would be a third degree felony, punishable by up to five years in prison.[36] Further, the bill provides that a county or municipality is not prevented from enacting an ordinance relating to restrictions on the location of the residence of a sexual offender provided that the ordinance is identical to those provided in the bill. An ordinance may differ as to the offenses that might subject an offender to residence restrictions.

Application to current residences: The bill provides that amendments in the act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an

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[28] s. 948.30(1)(b), F.S.

[29] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

[30] The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

[31] Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

[32] Section 947.1405(7)(a)2, F.S

[33] The term "permanent residence" is defined as a place where a person abides, lodges, or resides for 14 or more consecutive days. s. 775.21(2)(f), F.S.

[34] The term "temporary residence" is defined as a place where a "person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or 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." S. 775.21(2)(g), F.S.

[35] The bill refers to a public school bus stop "as provided in s. 947.1405(7)(a)". The referenced section prohibits certain offenders on conditional release from living within 1,000 feet of a "designated public school bus stop". The section does not contain a definition of the term and it is therefore not clear why the bill references this section.

[36] s. 775.21(10)(a), F.S. The offense would be ranked in Level 7 of the Offense Severity Ranking Chart. s. 921.0022(3)(g), F.S.

offender who had established, prior to the effective date of the act, a residence not in compliance with the amendments to such restrictions.

Landlord/owner renting or leasing to restricted sex offender:
The bill provides that a landlord or owner of a residential dwelling unit may not knowingly rent or lease a residential dwelling unit located within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate if a prospective tenant[37] is a restricted sex offender (as defined above) who intends to occupy the unit unless the landlord or owner can establish that, prior to rental or lease, he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender intending to occupy the unit. A violation of this provision will be a second degree misdemeanor, punishable by up to 60 days in county jail and a $500 fine.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to residency restrictions on sexual predators.

Section 2. Amends s. 794.065, F.S., relating to residency requirements for restricted sex offenders.

Section 3. Amends s. 647.1405, F.S., relating to conditions of conditional release program.

Section 4. Amends s. 948.30, F.S. relating to terms of probation or community control.

Section 5. Provides that sexual predators and sexual offenders will not be required to relocated in certain circumstances.

Section 6. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

   FDLE has indicated that the bill will have a non-recurring impact on that department as follows:

Notification & Documentation to registrants	35,500
Update & Distribute Forms	22,700
Criminal Justice Training	3,400
Staff Research Hours (83,300 hours)	986,397
System Programming	15,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[37] The bill states that prospective tenant is defined as in s. 83.43. That section contains a definition of the term "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement".

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a fiscal impact on landlords or owners of residential dwelling units who will be prohibited from renting or leasing a unit to a restricted sex offender (as defined by the bill) and will apparently be required to determine whether a prospective tenant is a restricted sex offender. The bill may also have a fiscal impact on restricted sex offenders and other offender who will prohibited from living within 2,500 feet of certain locations. If offenders cannot find a place to live in a densely populated area, they may be required to travel a longer distance to their place of employment.

D. FISCAL COMMENTS:

See above comments.

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:

The bill will have the affect of prohibiting certain people who commit a sexual offense on a minor after October 1, 2006 and who may have already finished their term of incarceration or supervision, from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate. Because these places, particularly school bus stops, are prevalent in most communities, it is possible that there will be communities in which such people will be effectively barred from residing. It may be particularly difficult for such people to find a place to reside in a populated area.

Section 794.065, F.S. which restricts the residence of a person who committed a sexual offense after October 1, 2004, was enacted during the 2004 session. 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.

In *Milks v. State*, 894 So.2d 924 (Fla. 2005), the Florida Supreme Court considered a challenge to the constitutionality of the Florida Sexual Predators Act. The defendant argued that the act violated his right to procedural due process because the act did not provide any procedure for determining in individual cases whether a person "actually presents a danger to the community that would justify the imposition of the Act's requirements, particularly the Act's registration and public-notification requirements." In rejecting these challenges, the court noted that the United States Supreme Court had rejected an identical challenge to Connecticut's sex offender law. *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160 (2003); s*ee also*, *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005)(rejecting substantive due process, equal protection and separation of powers challenges to Florida Sexual Predators Act).

Because state statutes restricting the residency of sex offenders are of recent origin, there are only two reported decisions nationwide on their constitutionality at this time.

In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), the court considered a challenge to an Iowa statute that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or registered child care facility. The court ruled unanimously that the residency restriction was not unconstitutional on its face. The court rejected appellees claims that the statute violated the procedural and substantive due process rights of sex offenders. The court held that although, in some cases, a sex offender would be unable to live at their family's residence, the statute did not directly operate on the family relationship. The court also rejected the idea that the statute interfered with any right to travel. The court rejected the appellees call to recognize a "fundamental right 'to live where you want'". *Id*. at 713. The court further rejected appellees arguments that the law was irrational because the legislature did not have scientific proof that excluding sex offenders from living in certain locations will enhance the safety of children and noted that this is "the sort of task for which the elected policymaking officials of a State, and not the federal courts, are properly suited." *Id.* at 715. *See also, Iowa v. Seering*, 701 N.W.2d 655 (Iowa 2005))(Iowa Supreme Court case affirming statute).

The bill amends the sexual predator statute, s. 775.21, F.S. to provide that a sexual predator may not establish a permanent or temporary residence within 2,500 feet of certain locations. This provision will likely be challenged as a violation of the ex post facto clause of the federal constitution. In considering whether a law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, a court determines whether the legislature meant the statute to establish civil proceedings. If the legislature intended to impose punishment, the court will find that the provision in question violates the ex post facto clause. If the court finds that the legislature intended to enact a regulatory scheme that is civil and nonpunitive, the court will examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil. *Smith v. Doe*, 123 S.Ct. 1140 (2003). In analyzing the effects of an act, the factors "most relevant to [an] analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Id.* at 1149. The *Doe v. Miller,* case discussed above, applied the this test to the Iowa statute and two of the three judges determined that the statute did not violate the ex post facto clause.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill provides that a sexual predator may not establish or maintain a permanent or temporary residence within 2,500 feet of a school, day care center, park, playground, school bus stop or other place where children regularly congregate. The bill also provides that a county or municipality is not prohibited from enacting an ordinance relating to restrictions as to the location of the residence of *sexual offenders*. This reference should probably be to sexual *predators* instead of sexual offenders unless the term sexual offenders as used in this provision is meant to broadly apply to people who have been convicted of a sexual offense rather than only people who meet the statutory definition of a sexual offender contained in chapter 943.

Section 2 of the bill prohibits a landlord or owner of a residential dwelling unit from knowingly renting or leasing a unit within 2,500 feet of certain locations to a restricted sex offender unless the landlord or owner can establish that prior to the rental or lease he or she used *reasonable due diligence* and was unable to determine that a prospective tenant of the unit was a restricted sex offender.

While the term "due diligence" is used throughout the statutes, the term "reasonable due diligence" is not used.

The bill provides that the landlord shall not "knowingly" rent a dwelling unit located within 2,500 feet of certain locations to a restricted sex offender. It is not clear what the term "knowingly" is meant to modify. If may be intended to apply to the distance of the residence from a particular place or to whether a particular person is a sex offender or to both. If it is meant to require proof that the landlord knew that the person was a restricted sex offender, it is not clear why the phrase "unless the landlord or owner can establish that prior to the rental or lease he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender" is included. It does not seem feasible that a landlord could know that a person was a restricted sex offender and also be able to establish that he or she was unable to determine that a prospective tenant was a restricted sex offender. It is possible that the statute is not intended to require proof that the landlord knew that the person was a restricted sex offender and that the reasonable due diligence portion is meant to be an affirmative defense to a prosecution.

A landlord or owner will apparently be required to determine whether a prospective tenant is a restricted sex offender as defined in statute. To do this, the landlord will need to discover whether a prospective tenant has been convicted of one of a list of sexual offenses or a similar offense in another jurisdiction. The landlord will need to discover whether a victim was under the age of 18 at the time of the offense and if the offender was 18 or older or was under 18 and prosecuted as an adult. Any person can request a name based state criminal history check through the Florida Department of Law Enforcement for a 23 dollar fee. This check, however, does not disclose all of the information relevant to determining whether a person is a restricted sex offender. For example, this type of check would not reveal convictions from another state. Federal law does not permit a member of the general public to request a nationwide criminal history check. Further, if a landlord had access to information regarding convictions from another state, it may be difficult for the landlord to determine whether a conviction was for an offense similar to one in this state.

A landlord will apparently also be required to know the locations of schools, public school bus stops, day care centers, parks, playgrounds and other places where children regularly congregate within the vicinity of the residential dwelling unit and know whether these places are within 2,500 feet of the residence, measured in conformity with the bill.

The bill refers to a "prospective tenant" as defined in s. 83.43, F.S. This section defines the term "tenant" as means any person entitled to occupy a dwelling unit under a rental agreement. This appears to include not only the person who signs the lease or rental agreement but anyone entitled to occupy the unit. This may impact how a landlord drafts a lease by specifying who is entitled to occupy the dwelling unit.

Section 2 of the bill amends s. 794.065, F.S. which currently prohibits persons convicted of certain sexual offenses committed after October 1, *2004* from residing within *1,000* feet of a school, day care center, park or playground. The bill amends this provision to prohibit persons convicted of certain sexual offenses committed after October 1, *2006* from living within *2,500* feet of a school, day care center, park or playground. Additionally the bill adds language prohibiting a restricted sex offender who committed the offense after October 1, *2006* from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate. It is not clear why the provision currently in statute, which is modified by the bill to apply to offenses committed after October 1, 2006 rather than 2004, has not been repealed or left as written to apply to offenses committed after October 1, 2004. As written, the bill appears to lift the current restriction on where offenders who committed their offense after October 1, 2004 but before October 1, 2006 are permitted to live. The new language in the section appears to supersede the former language because they both apply to persons convicted after October 1, 2006 and the new language places more restrictions on an offender. The bill analysis provided by the Department of Corrections described the impact of the section as follows:

> This bill may undo current residence restrictions on sex offenders whose crimes are committed between 10/1/04 and 9/30/06. Under section 2 of the bill former s. 794.065(2) is renumbered as

(3)(b). The existing application of the law to offenses committed on or after 10/1/04 is deleted, and a new effective date applies the law to offenses committed on or after 10/1/06. The entire bill is effective 10/1/06 as well.

On 10/1/06, when this bill becomes law, there will be no residence restriction against offenders not on supervision who committed their crimes between 10/1/04 and 9/30/06. Offenders required to move from a location under the earlier law would be allowed to return to the same location under this amendment. By specifying that the restrictions apply only to crimes committed on or after 10/1/06, and removing the 2004 effective offense date, the bill removes the residence restrictions for offenses committed prior to the new effective date. With the passage of this bill, on 10/1/06 there is no law that restricts where offenders not on supervision who committed their crimes prior to 10/1/06 can reside.

Section 3 of the bill amends the conditional release statute which currently provides that if the victim was under age 18, a releasee is prohibited from *working* for pay or as a volunteer at any school, day care center, park, playground or other place where children regularly congregate. The bill adds designated school bus stop. Unlike the other locations in current law, it is not clear what possible employment a releasee could have *at* a designated public school bus stop.

Further, as written, effective October 1, 2006, this section will prohibit a district school board from establishing or relocating a public school bus stop within 2,500 (rather than 1,000) feet of a conditional releasee. Further, the bill will prohibit a school district from locating a bus stop within 2,500 feet of the "permanent residence of a sexual predator who is subject to s. 775.21(7)(e), the permanent residence of an individual subject to registration as a sexual offender under s. 943.0435, or the permanent residence of a restricted sex offender under s. 794.065". If on October 1, 2006, any school bus stop is located within 2,500 feet of the residence of a person listed above, the school district must relocate the bus stop. As written, this appears to apply not to just the relatively small list of offenders on conditional release but to all persons designated as a sexual offender, regardless of the age of the victim and regardless of when the offense was committed. The bill does not amend the sexual offender statute and does not prohibit all sexual offenders from living near a bus stop. As a result, school districts will apparently be required to move bus stops within 2,500 feet of the more than 30,000 sexual offenders even though not all sexual offenders will be prohibited from living near the bus stop.

Current law requires the Department of Corrections to notify school districts of the location of the residence of a conditional releasee. It is not clear how the school districts will know the residences of all of the offenders specified in the bill. Further, it may be preferable to relocate the provisions that do not relate specifically to conditional release to a more appropriate section of statute.

Section 4 of the bill prohibits probationers and community controllees who have committed certain specified offenses from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground, or other place where children regularly congregate. Unlike the residency restrictions elsewhere in statute and in the bill, this apparently applies to specified offenders regardless of the age of the victim.

Section 5 of the bill provides that the amendments of this act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an offender who has established, prior to the effective date of the act, a residence not in compliance with the amendments to such restrictions contained in the act. However, this section of the bill does not create or amend a section of statute and, as a result, will not be codified in the statutes with the sections of statute that it is intended to apply to. It may be preferable to have this language amended on to each section of statute amended by the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES