

The bill requires registered sexual predators or sexual offender to provide information regarding his or her transient residence. The Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

The Committee on Homeland Security & Public Safety adopted a strike-all amendment which is traveling with the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill would prohibit certain offenders from being present at specified locations.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration: 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. A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ Failure to comply with these requirements is a third or second degree felony, depending of the offense.

During initial registration, a sexual predator or sexual offender is required to provide certain information including the address of his or her permanent or temporary residence to the sheriff's department who, in turn, provides this information to the Florida Department of Law Enforcement for inclusion in the statewide database. For a sexual predator or sexual offender who is not in the custody of or under the supervision of the Department of Corrections or a local jail, this information must be provided within 48 hours of establishing or maintaining a residence.

A sexual predator or sexual offender is required to update information regarding his or her permanent or temporary residence. A sexual predator or sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence must, within 48 hours after vacating the permanent residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence. Currently, the term temporary residence is defined as follows:

a place where the person abides, lodges, or resides for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, 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.

The bill specifies that the definition includes vacation, business or personal travel destinations.

The bill defines the term "transient residence" to mean "a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address, and the term includes, but is not limited to, any place where the person sleeps or seeks shelter, including a location that has no specific street address." The bill requires a sexual predator or sexual offender to provide information regarding his or her transient residence.

¹ See generally, ss. 775.21, 943.0435 and 944.607, F.S.

Loitering or prowling: Certain sexual predators who have committed an offense against a minor victim and certain offenders who are on supervision for a sexual offense are prohibited from working at specified locations.² Although there are statutory restrictions on where certain people who have been convicted of a sexual offense can reside,³ there are no statutory restrictions on where a person who has been convicted of a sexual offense can visit.

The loitering statute, section 856.021, F.S. provides as follows:

- (1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.
- (2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

Currently, a violation of this section is a second degree misdemeanor.

The bill provides that for an offender convicted of an offense contained in the sexual offender statute⁴ where one or more of his or her qualifying offenses was committed against a victim who was under the age of 18 at the time of the offense, it is unlawful to:

1. Loiter or prowl⁵ within 300 feet of a place where children regularly congregate, including, but not limited to, a school, day care center, playground, or park without a justifiable reason or purpose;
2. Knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground unless the offender is a parent or guardian of a person under 18 year of age who is also present within close proximity in the building or on the grounds; or
3. Knowingly be present in any child care facility or pre-K through 12 school or on real property comprising any child care facility or pre-K through 12 school unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner. The offender is responsible for notifying the child care facility owner or the

² See s. 775.21(10)(b); 947.1405(7)(a)6.; 948.30(1)(f), F.S.

³ See s. 794.065; 947.1405(7)(a)2; 948.30(1)(b), F.S.

⁴ The offenses includes sections 787.01 (kidnapping); s. 787.02 (false imprisonment); s. 787.025 (luring or enticing a child); s. 794.011 (sexual battery); s. 794.05 (unlawful sexual activity with certain minors); s. 796.03 (procuring a person under the age of 18 for prostitution); s. 796.035, (selling or buying of a minor into sex trafficking or prostitution); 800.04 (lewd or lascivious offenses); 825.1025(2)(b) (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); 847.0135 (traveling to meet a minor for the purpose of engaging in illegal sexual activity); s. 847.0137; (transmitting child pornography); s. 847.0138 (transmitting material harmful to minors); s. 985.701 (sexual misconduct by a Department of Juvenile Justice employee)

⁵ The bill provides that the term "loiter or prowl" has the same meaning as in s. 856.021, F.S.

principal's office when he or she arrives and departs the child care facility or school. If the offender is to be present in the vicinity of children, the offender has the duty to remain under direct supervision of a child care facility or school official⁶ or designated chaperone.

The bill provides that it is not a violation of this provision if, the child care facility or school is a voting location and the offender is present for the purpose of voting during the hours designated for voting or the offender is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

The bill provides that a violation of this section will be a first degree misdemeanor.

Probation and community control - generally: Probation is a form of community supervision requiring specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.⁷ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.⁸

Conditional release - generally: 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.⁹ The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.¹⁰ The Department of Corrections supervises the offender while on conditional release.

Conditions of probation/community control/conditional release: Currently, an offender who is on probation or community control for a specified sexual offense¹¹ and therefore supervised by the Department of Corrections, must comply with additional terms and conditions of supervision including the following:

1. A prohibition 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 18.¹²
2. A prohibition on any contact with the victim unless approved by the victim, the offender's therapist and the sentencing court.¹³
3. If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except in specified circumstances.¹⁴

⁶ The bill defines the term "school official" to mean a principal, school resource officer, teacher or any other certified employee of the school, the superintendent of the school board, the superintendent of schools, a member of the school board, a child care facility owner or a child care provider.

⁷ Section 948.001(5), F.S.

⁸ Section 948.001(2), F.S.

⁹ 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.

¹⁰ The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

¹¹ 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.)

¹² Section 948.30(1)(b), F.S.

¹³ S. 948.30(1)(d), F.S.

4. If the victim was under the age of 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks and malls.¹⁵

For inmates convicted of certain sexual offenses¹⁶ or offenses against children, who are subject to conditional release, section 947.1405(7)(a), F.S., requires the Parole Commission to impose a list of conditions similar to those above.

Additional conditions required by HB 1107: HB 1107 provides that effective July 1, 2008, the court must impose special conditions, described below, on the following probationers or community controllees:

1. A probationer or community controllee who committed the offense of sexual battery, a lewd or lascivious offense, promoting sexual performance by a child or selling or buying a minor for child pornography when at the time of the offense, the victim was under 16 years of age and the offender was 18 years of age or older on or after July 1, 2008;
2. A probationer or community controllee who is designated as a sexual predator or is determined to be a sexually violent predator under chapter 394;
3. A probationer or community controllee designated as a sexual predator or subject to registration as a sexual offender who has committed an offense that would meet the criteria for the designation or the registration requirement where, at the time of the offense, the victim was under 16 years of age and the probationer or community controllee was 18 years of age or older, who commits a violation of s. 775.21 or s. 943.0435 on or after July 1, 2008 and who is not otherwise subject to this paragraph.

The special conditions which must be imposed on this group of probationers and community controllees include:

1. A prohibition on visiting areas where children regularly congregate, including but not limited to, schools, day care centers, parks and playgrounds. The bill provides that the court may also designate additional locations to protect the victim.
2. A prohibition on participating in holiday events, including but not limited to:
 - a. distributing candy or other items to children on Halloween,
 - b. wearing a Santa Claus costume on or preceding Christmas,
 - c. wearing an Easter Bunny costume on or preceding Easter;
 - d. entertaining at children's parties; or
 - e. wearing a clown costume

without prior approval of the court.

¹⁴ s. 948.30(1)(e), F.S.

¹⁵ s. 948.30(1)(f), F.S.

¹⁶ 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).

The bill also requires that these conditions be placed on conditional releasees who meet the above criteria.

Polygraph examinations: Currently, pursuant to s. 948.30(2)(a), F.S., for a probationer or community controllee whose specified sexual offense was committed on or after October 1, 1997, the court must order, as part of a treatment program, that the probationer or community controllee participate at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders where available and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove that a violation of probation occurred.

HB 1107 requires that the polygraph examiner be authorized by the DOC and approved by the court. The bill also provides that the results of the polygraph examination must be provided to the probationer or community controllee's probation officer and therapist.

Evaluation and treatment of offenders on supervision: Section 948.31, F.S. provides that the court must require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by such diagnosis and evaluation process, the court must require outpatient counseling as a term or condition of probation or community control for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child or for prostitution.

HB 1107 amends this provision to remove reference to the court requiring a "diagnosis" of the probationer or community controllee and retains the reference to an "evaluation". The bill also removes reference to the court requiring "outpatient" treatment and instead refers to "sex offender treatment". The bill alters the offenses for which this treatment can be ordered if needed to include any offense for which a person can be designated as a sexual predator or subject to registration as a sexual offender. Current law provides that the treatment can be obtained from a community health center, a recognized social service agency providing mental health services, or a private mental health professional or through other professional counseling. The bill amends this to require that the treatment be obtained from a qualified practitioner specifically trained to treat sex offenders. The bill provides that the court must impose restrictions against contact with minors if sex offender treatment is recommended.

The bill also amends s. 947.1405(7), F.S. to place these requirements in the relevant conditional release statutes.

Search of registration information:

Section 943.04342, F.S. provides that when the court places a defendant on misdemeanor probation pursuant to sections 948.01 and 948.15, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE. The bill requires that the probation service also must search the probationer's name through the National Sex Offender Registry maintained by the United States Department of Justice.

C. SECTION DIRECTORY:

- Section 1. Creates s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children.
- Section 2. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act.
- Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.
- Section 4. Amends s. 943.04352, F.S., relating to search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.
- Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.
- Section 6. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.
- Section 7. Amends s. 947.1405, F.S., relating to conditional release program.
- Section 8. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.
- Section 9. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.
- Section 10. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.
- Section 11. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.
- Section 12. Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates a first degree misdemeanor offense for a person who has been convicted of certain sexual offenses to loiter or prowl within 300 feet of certain places. The bill will also make it a first degree misdemeanor for a person who has been convicted of certain sexual offenses to approach, contact or communicate with a minor child in a public park or playground or knowingly be present in a child care facility or a school with specified exceptions. This could have a county jail impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See comments below relating to day care centers.

D. FISCAL COMMENTS:

On March 14, 2008, the Criminal Justice Impact Conference indicated that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides that with specified exceptions, certain offenders cannot be present in a child care facility or school unless they given written notice to the school or day care. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could place an additional workload on schools and day care centers that would be required to provide such supervision.

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:

These comments are to the bill as originally filed.

Section 1: Section 1 of the bill would prohibit an offender who had been convicted of a specified sexual offense against a victim under the age of 18 from being present in a child care facility or school or on the real property of a school or day care unless he or she provides written notice to the principal or child care facility owner. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This is not limited to times where the school or day care is in operation. This could have broad impact on where these offenders would be able to go without providing written notice and having a chaperone. For example, an offender may be prohibited from going to these places without providing written notice and having a designated chaperone:

- a church that contains a day care center;
- a school parent-teacher conference;
- a high school football game;
- an adult education program held at a high school in the evening.

Section 7: Section 7 of the bill provides special conditions of supervision for certain conditional releases. On line 904-907, the bill refers to “a release who is designated as a sexual predator under s. 775.21 or who is determined to be a sexually violent predator under chapter 394”. It is not clear why the reference to chapter 394 is necessary because pursuant to s. 775.21(4)(d), F.S., a person who is determined to be a sexually violent predator under chapter 394 is by definition a sexual predator under s. 775.21. The same language is found on line 968 in reference to probationers.

On line 926, the bill refers to prior approval of the “court”. Because this section of statute relates to conditional release, this reference should be to the Parole Commission.

On line 921, the bill prohibits certain conditional releasees from participating in “holiday events”. This is not limited to events in which children will be present and could broadly impact the ability of an offender to participate in holiday events. The same language is found on line 980.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on Homeland Security & Public Safety adopted a strike all amendment that is traveling with the bill. The amendment:

- Modifies the language of the bill relating to loitering or prowling;

- Removes language from the bill prohibiting certain offenders from being present at a school or day care;
- Removes the section of the bill which required sexual predators and sexual offenders to provide transient residence information;
- Removes language from the bill relating to polygraph examinations and requirements for sex offender treatment;
- Provides for the preemption of local ordinances relating to residency restrictions for sexual offenders;
- Expands current statutory residency restrictions from 1,000 feet to 1,500 feet and adds additional offense which qualify a person for the residence restrictions;
- Prohibits a sexual predator from working at a library;
- Requires local law enforcement to provide information to libraries regarding the residence of a sexual predator;