

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1430

INTRODUCER: Criminal Justice Committee and Senator Aronberg

SUBJECT: Sexual Predators & Offenders/Public Safety/Local residency ordinance preemption

DATE: April 1, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is focused on persons who have committed sexual crimes against children. It preempts to the state the adoption of residency exclusion zones for enumerated sexual offenders and predators. It also repeals and abolishes all local ordinances that contain residency exclusion zones (regardless of whether they are more stringent than the statewide restriction).

It extends the current statewide residency exclusion zone around certain designated places from 1000 feet to 1500 feet. In addition, it expands the places from which the statewide exclusionary zone is measured and at which these persons are prohibited from working or volunteering. It provides enhanced penalties for certain offenders who are convicted of loitering or prowling within 600 feet of a place where children regularly congregate.

The bill also adds new offenders who are subject to conditional release supervision after incarceration; expands the requirement for electronic monitoring while under community supervision for two additional offenses; eliminates inability to locate a residence as a defense to a community supervision violation allegation; and provides that indigent sexual predators may defer payment of costs of probation, community control, or conditional release supervision by establishing a payment plan with the clerk of court pursuant to s. 28.246, F.S.

It also directs FDLE to study the feasibility of changing the beginning dates for when the commission of a crime requires registration as a sexual offender or predator.

This bill amends the following sections of Florida Statutes: 775.21, 775.24, 794.065, 947.1405, 947.141, 948.06, 948.063, and 948.30. The bill creates sections 775.215, 794.0701, and one unnumbered section of the Florida Statutes.

II. Present Situation:

As of February 29, 2008, there were 6,862 sexual predators and 40,547 sexual offenders in the state registry. The criteria for designation as a sexual predator are found in s. 775.21, F.S., and the criteria for sexual offenders in s. 943.0435, F.S. 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. Sexual predator status can only be conferred for offenses committed on or after October 1, 1993. Sexual offender status applies only if the person was released from the sanction for the designated offense on or after October 1, 1997. The list of designated offenses is not identical for sexual offenders and sexual predators, but commission of any of the following offenses would require registration as either a sexual offender or a sexual predator:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.)
- Sexual battery under ch. 794, F.S. (except false accusation of another and refusal to be chemical castrated)
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.)
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.)
- Lewd or lascivious offenses upon or in the presence of a person under 16 (s. 800.04, F.S.)
- Lewd or lascivious offenses on an elderly or disabled person (s. 825.1025, F.S.)
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.)
- Distribution of obscene materials to a minor (s. 847.0133, F.S.)
- Computer pornography (s. 847.0135, F.S.)
- Transmission of child pornography by electronic device (s. 847.0137, F.S.)
- Transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.)
- Selling or buying of minors for child pornography (s. 847.0145, F.S.)
- Sexual misconduct by a DJJ employee with a juvenile offender (s. 985.701(1), F.S.)
- Violating a similar law of another jurisdiction

Payment of Costs of Supervision

Sexual predators who are financially able to do so must pay all or part of the costs of supervision as a condition of supervision. They must also pay any other restitution or costs imposed as a condition of supervision. There are no provisions currently in statutes that authorize deferred payment pursuant to s. 28.246, F.S., of all or part of the costs in accordance with the provisions of that section. However, s. 948.09(3), F.S., allows the DOC to exempt a person from paying all

or part of costs for various reasons, including insufficient income to make these payments because the offender has not been able to find work (providing he or she has diligently attempted to find a job).

Notification Requirement

Section 775.21(7), F.S., requires law enforcement agencies to notify schools and day care centers within a 1-mile radius of the permanent or temporary residence of a sexual predator within 48 hours of receiving notification of the predator's presence.

Conditional Release Supervision

The Legislature created the Conditional Release Program in 1988. Conditional release requires mandatory post-prison supervision for inmates who: (1) are sentenced for certain violent crimes and who have served a prior felony commitment; (2) are sentenced as a habitual offender, violent habitual offender, or violent career criminal; or (3) are subject to designation as a sexual predator. Inmates on conditional release are supervised for a period of time equal to the gain-time that they received in prison. Violation of the conditions of supervision can result in revocation of conditional release and return to prison, s. 947.1405, F.S. In Fiscal year 2006-2007, 4,879 offenders were placed on conditional release supervision. As of January 31, 2008, 2321 conditional releasees were being supervised in either an active or an active-suspense status.¹

Residency Exclusions

As part of the effort to protect children from sexual predators and offenders, many states have passed laws to prohibit such offenders from living near places that are typically frequented by children. These residency exclusions (also commonly referred to as "buffer zones") are based on the idea that if sexual offenders do not live near places where children gather, such as schools or day care centers, they will be less likely to commit sexual offenses against children who go to those places. It is logical that removing the offender from proximity to children will both lessen the opportunity and reduce the temptation for them to reoffend.

Critics of residency exclusion laws point out that the great majority of sexual offenses against children are committed by someone who has developed a relationship with a child. All too often, this is a family member, an adult or adolescent family friend, or a person in a position of trust or authority. A counterpoint is that residency exclusion zones at least limit the opportunity for an offender to begin the initial process of breaking down the child's natural wariness of strangers. For instance, if the child goes by the house of a man who waves a friendly greeting every day, he or she may be less likely to consider that person as a stranger. The offender could use that as a point of vulnerability to begin cultivating an exploitative relationship with the child.

As residency exclusion zones become more restrictive by increasing distance or adding new protected places, it becomes more difficult for offenders to find a lawful place to live. In order to comply with the law, these offenders must live somewhere outside of the residency exclusionary zone. Critics, including some law enforcement officials, have expressed concern that increasingly restrictive residency exclusion laws have the counter-productive effect of causing offenders to quit registering their addresses rather than moving.

¹ Data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida's Community Supervision Population, January 2008.

In Florida, state law prohibits persons who have committed certain sex offenses from residing within 1000 feet of designated places. These restrictions apply for life to offenders who committed certain offenses after October 1, 2004, and for the duration of supervision for offenders placed on conditional release after certain dates, and offenders on probation or community control for committing designated offenses after certain dates. These designated offenses are: s. 794.011, F.S. (sexual battery), s. 800.04, F.S. (lewd or lascivious offenses upon or in the presence of a person under 16), s. 827.071, F.S. (enticing, promoting, or possessing images of sexual performance by a child), and s. 847.0145, F.S. (selling or buying of minors). The restrictions are as follows:

- *Unsupervised Persons* – Section 794.065, F.S., applies to persons convicted for committing a designated offense on or after October 1, 2004, if the victim was less than 16 years of age. Such an offender is prohibited from residing within 1000 feet of a school, day care center, park, or playground. Violation is a first degree misdemeanor if the underlying offense was a second or third degree felony, and it is a third degree felony if the underlying offense was a first degree felony.
- *Conditional Releasees* – Section 947.1405(7)(a), F.S., applies to offenders on conditional release supervision who committed a designated offense on or after October 1, 1995, if the victim was less than 18 years of age. As a condition of supervision, such offenders are prohibited from residing within 1000 feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. This provision became effective on October 1, 2004, and the commission and DOC were prohibited from approving establishment of a residence inside the exclusion zone on or after that date. Also, school boards were required to relocate existing school bus stops within 1000 feet of an offender’s residence and are prohibited from establishing new bus stops within the proscribed distance.
- *Probationers and Community Controllees* – Section 948.30(1)(b), F.S., also applies to offenders on probation or community control supervision who committed a designated offense on or after October 1, 1995, if the victim was less than 18 years of age. However, the list of places from which the exclusionary zone is measured does not include “designated public school bus stop.” Also, the statute specifies that measurement is to be made by straight line distance, not by a pedestrian or automobile route. DOC reports that it measures in a straight line for all offenders who are subject to a residency exclusion even if the method is not specified in the statute.

DOC reports that it expends considerable effort in attempting to assist supervised offenders in locating residences that are not in violation of the conditions of supervision. Of course, it is most difficult for conditional releasees to find an acceptable residence because of the exclusion zone around public school bus stops that is applicable to them. DOC and the Department of Education have developed a process to identify whether an offender’s residence or proposed residence is within 1000 feet of a school bus stop. DOC has also made progress in collecting data and automating the process for identifying the locations of other protected places. However, the success of this task is dependent upon the cooperation of other state and local agencies that do not have a specific statutory duty to assist in the process.

Local Residency Exclusion Ordinances

Over the past few years, a large number of Florida cities and counties have passed their own residency exclusions that apply to persons who have committed certain sex crimes. According to information compiled by DOC, 126 local governments have passed residence exclusion ordinances. At least ten counties are completely covered by a 2500 foot residence exclusion, including Dade, Polk, and Duval counties. The most common distance is 2500 feet. In addition to increasing the distance, some ordinances add additional places from which measurement is made. The Duval County ordinance was recently found to be an unconstitutional violation of substantive due process by the county court in *State v. Schmidt*, Case No. 16-2006-MO-010568-AXXX (Duval County Court October 11, 2007). The Dade County and Broward County ordinances were likewise recently challenged, but the cases were settled and withdrawn.

In addition to ensuring compliance with the statewide 1000 foot restriction, DOC must be aware of the details of the more restrictive local ordinances in order for offenders to find a residence that is acceptable.

Workplace Exclusions

State law also limits where persons who have committed certain sex offenses can work, whether for pay or as a volunteer.

- *Sexual Predators* – Section 775.21(10)(b), F.S., applies to sexual predators who have been convicted of almost any of the previously listed offenses that would require registration as either a sexual offender or a sexual predator if the victim was a minor.² These sexual predators are prohibited from working at any business, school, day care center, park, playground, or other place where children regularly congregate. Violation is a third degree felony.
- *Conditional Releasees* – Section 947.1405(7)(a)6., F.S., applies to the same group of offenders on conditional release supervision who are subject to the 1000 foot residency restriction. As a condition of supervision, these conditional releasees are prohibited from working or volunteering at any school, day care center, park, playground, or other place where children regularly congregate.
- *Probationers and Community Controllees* – Section 948.30(1)(f), F.S., applies to the same group of probationers and community controllees as the residency exclusion. However, the list of places where they are prohibited from working is more detailed. Prohibited places are “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.”

² The exceptions are: disclosure of identifying information of a sexual offense victim by a public employee or officer, failing to report sexual battery, publishing or broadcasting the identity of a sexual offense victim, and possession of an erectile dysfunction drug by a sexual predator, all offenses under ch. 794, F.S.; computer pornography under s. 847.0135, F.S.; transmission of child pornography by electronic device under s. 847.0137, F.S.; and transmission of material harmful to minors to a minor by electronic device under s. 847.0138, F.S.

Section 907.041(4)(b), F.S., allows a court to release a person charged with a dangerous crime on the condition that he or she be electronically monitored. Electronic monitoring is the process by which an offender is tracked through a transmitter attached to him or her and a receiver which receives the signal. Monitoring devices use the technology of radio frequencies, cellular phones, and GPS to provide tracking systems that can provide location information on a constant 24 hour basis.

Electronic monitoring is currently used by the Department of Corrections to track adult offenders on probation. In the juvenile system electronic monitoring is one of the forms of pretrial detention that can be ordered if allowed by the risk assessment instrument.³ However, pre-trial release is a function of local law enforcement and the state is not involved in enforcing the conditions of pretrial release.

Section 856.021, F.S., makes it a second degree misdemeanor to loiter or prowl in a place, or at a time, or in an unusual manner for lawful persons, under circumstances that warrant immediate concern for the safety of persons or property in the area. The statute goes on to provide examples of circumstances warranting such concern.

III. Effect of Proposed Changes:

Section 1 amends s. 775.21(3), F.S., to provide that indigent sexual predators may defer payment of costs of probation, community control, or conditional release supervision by establishing a payment plan with the clerk of court pursuant to s. 28.246, F.S. Currently, the statute provides that sexual predators who are financially able must pay all or part of the costs of supervision.

Section 775.21(7), F.S., is amended to add libraries to the list of entities that law enforcement must notify when a sexual predator establishes a residence within a 1-mile radius of the entity.

Section 775.21(10), F.S., is amended to add libraries to the list of prohibited places of employment as a separate criminal offense for most sexual predators whose victim was a minor.

Section 2 of the bill creates s. 775.215, F.S., which preempts to the state the adoption of residency exclusion zones for persons convicted of kidnapping or false imprisonment, sexual battery, lewd or lascivious offenses against a child, sexual performance by a child, or selling or buying minors for child pornography. It also repeals and abolishes all local ordinances that contain residency exclusion zones (regardless of whether they are more stringent than the statewide restriction).

Section 3 amends s. 775.24, F.S., to provide that a judge cannot exempt a person from any applicable residency exclusion in ss. 794.065, 947.1405, and 948.30, F.S., if the person meets the criteria for designation as a sexual predator or for classification as a sexual offender. Currently, the judge cannot exempt such a person from registration and notification requirements.

Section 4 amends s. 794.065, F.S., by creating a new subsection that is applicable to offenses committed on or after October 1, 2008. The list of offenses to which the residency exclusion

³ s. 985.215, F.S.

applies is expanded to include violations of s. 787.01, F.S. (kidnapping), and s. 787.02, F.S. (false imprisonment), if the victim was a minor. Unlike the other listed offenses, these are not necessarily sexual offenses.

Most significantly, for persons who are convicted of any of the enumerated offenses when the victim is under 16 years (kidnapping or false imprisonment, sexual battery, lewd or lascivious offenses against a child, sexual performance by a child, or selling or buying minors for child pornography) on or after October 1, 2008, the residency exclusion is extended from 1000 feet to 1500 feet. Measurement of the new exclusionary zone must be by straight line, which is the method used to determine the residency exclusion for probationers, not by pedestrian or automobile route.

Section 5 creates s. 794.0701, F.S., to make it a first degree misdemeanor (currently it is a second degree misdemeanor), for certain offenders to loiter or prowl within 600 feet of a place where children regularly congregate, including schools, bus stops, day care centers, playgrounds, parks, or libraries. These offenders would include any person convicted of kidnapping or false imprisonment, sexual battery, lewd or lascivious offenses against a child, sexual performance by a child, or selling or buying minors for child pornography when the victim is less than 16 years of age.

Section 6 amends s. 947.1405(2)(a), F.S., to make prisoners who have been convicted of kidnapping of a child (s. 787.01(3), F.S.), false imprisonment of a child (s. 787.02(3), F.S.), sexual performance by a child (s. 827.071, F.S.), and selling or buying minors (s. 847.0145, F.S.), on or after October 1, 2008, subject to conditional release supervision after their release. Under the Jessica Lunsford Act, the Parole Commission is required to impose electronic monitoring on offenders convicted of promoting a sexual performance by a child or of selling or buying minors, but these are currently not conditional release-eligible offenses. Therefore, the commission has no authority over persons convicted of those crimes.

Section 947.1405(2)(c) and (d), F.S., are also amended to affect post-release supervision of inmates who are sexual offenders or sexual predators and who are subject to both conditional release and a period of community supervision following their prison term. For these inmates, community supervision would follow conditional release supervision. This reverses the current statutory priority that requires community supervision to be completed before conditional release begins.

The question of whether conditional release should precede probation is not so easily answered. On the one hand, the Florida Supreme Court has noted that the conditional release is designed to “bridge the gap between prison and the outside world.” *Duncan v. Moore*, 754 So.2d 708, 710 (Fla. 2000). If this is the only purpose, conditional release is arguably unnecessary when the offender will be supervised under court-ordered probation or community control. On the other hand, the commission asserts that the conditions of conditional release are often more stringent than those of probation. Because the class of offenders subject to conditional supervision is deemed by the Legislature to be of particular concern, that perspective must be weighed in determining which program should have precedence.

Section 947.1405(6), F.S., is amended to permit the commission to modify the conditions of a releasee's community supervision at any time in order to ensure community safety.

Section 947.1405(7)(a), F.S., is amended to prohibit the commission or DOC from approving certain residence locations for a conditional releasee who has violated ch. 794, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0145, F.S., with a victim under age 18. The new prohibition extends the current residency exclusion zone from 1000 to 1500 feet, measured in a straight line. The same amendment is made to the list of places where a conditional offender is prohibited from working for pay or as a volunteer in s. 947.1405(7)(a)6., F.S.

New s. 947.1405(11), F.S., would require electronic monitoring for offenders who violate s. 787.01(3), F.S., or s. 787.02(3), F.S., (kidnapping and false imprisonment, respectively) on or after October 1, 2008, when the victim is under 16 years of age and the offender is 18 or older.

Section 7 creates a new s. 947.141(8), F.S., to provide that a conditional releasee who is a sexual offender or a sexual predator cannot use the defense of inability to locate a residence to contest a charge of violating the residency exclusion provision of s. 947.1405, F.S. Normally, a court cannot find that an offender has violated community supervision for committing an act when the offender does not have the ability to comply with the condition alleged to have been violated. This principle is codified in s. 948.06, F.S., with regard to failure of a probationer or community controllee to pay costs or a fine. That statute recognizes the defense of inability to pay, but places the burden of proving such inability upon the offender.

Section 8 amends s. 948.06(4), F.S., which applies to the judge's consideration of pre-hearing release of certain sexual offenders who are arrested for a violation of probation or community control. Currently, a judge cannot release such an offender without making a finding that the offender "is not a danger to the public." The amendment changes this to a requirement that the judge find that the offender "poses no danger to the public." Arguably, this change creates a higher standard for release. The section is also amended to include whether or not the probationer is currently subject to electronic monitoring as a factor to be considered in determining whether an offender poses no danger to the public.

Section 9 adds a new subsection to s. 948.063, F.S., prohibiting a probationer from using inability to locate a residence in compliance with the residency exclusion in s. 948.30, F.S., as a defense to a finding of a probation violation. The issues discussed in the analysis of the similar provision for conditional releasees in Section 7 of the bill are applicable. The provision omits reference to offenders who are on community control, which is probably unintentional.

Section 10 amends s. 948.30, F.S., which provides additional terms and conditions of probation or community control for certain sex offenses. Section 948.30, F.S., is amended to extend the exclusionary zone distance to 1500 feet and to modify the phrase "place where children congregate" (pertaining to the point from which to measure a residence exclusionary zone) to "place where children regularly congregate." This prevents an offender from being put in violation of the law by an unexpected congregation of children.

Section 948.30(4), F.S., is created to require electronic monitoring for probationers and community controllees who violate s. 787.01(3), F.S., or s. 787.02(3), F.S., (kidnapping and false

imprisonment, respectively) on or after October 1, 2008, when the victim is under 16 years of age and the offender is 18 or older.

This provision also applies to any offender on probation or community control whose crime was committed on or after October 1, 2008, and who had previously been convicted of violating the stated offense. As written, this would not apply to an offender if the crime for which he or she is currently on community supervision is one of the stated offenses, unless there was also a previous conviction. This is different than the similar provision in new s. 947.1405(11), F.S., which makes electronic monitoring a requirement only if the current conviction is the stated offense.

Section 11 requires FDLE to examine the feasibility of extending the date criteria for sexual predator and sexual offender classification to include earlier crimes. FDLE is to be assisted by designated entities involved with the criminal justice system and by the Legislative Committee on Intergovernmental Relations. The examination must consider the impact of eliminating the dates or making the dates earlier, including: (1) the effect, including fiscal impact, on FDLE, other state agencies, circuit courts, state attorneys, public defenders, and local law enforcement agencies; and (2) whether there are other factors, such as incomplete criminal histories and court records, that could make changes impractical or have a negative effective on the current registration system. FDLE is required to report its findings to legislative leaders by December 30, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The elimination in Sections 7 and 9 of the bill of a defense of being unable to comply with a residency restriction because of inability to locate a suitable residence raises potential issues of *ex post facto* application of criminal penalties and constitutional concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There are many possible impacts that could result from the lengthening of the distance of the state residency exclusion and the preemption of local residency exclusion ordinances, but there is too much uncertainty to make a valid estimate without extensive study.

C. Government Sector Impact:

Local Government- The portions of the bill that are related to residency restrictions do not appear to have a direct fiscal impact upon local government.

Department of Corrections- Section 6 of the bill:

- **Number of additional conditional release offenders** – No significant fiscal impact for the first three years because this program targets offenders with lengthy sentences and because of the prospective application of this change. Over time, however, the cumulative growth to the conditional release caseload could be significant. The department estimates 15 offenders under supervision in Year 5.
- **Additional electronic monitoring units needed:**

Fiscal Summary	FY 2008-09	FY 2009-10	FY 2010-11
Number of offenders on supervision	0	0	6
Number of offenders on supervision via EM	42	66	66
Electronic Monitoring-Active GPS Units	\$121,720	\$191,275	\$191,275
Total	\$121,720	\$191,275	\$191,275
Summary of Costs			
Recurring	\$121,720	\$191,275	\$191,275
Non-recurring	-	-	-
Total	\$121,720	\$191,275	\$191,275

Department of Law Enforcement – FDLE projects that the bill will have a fiscal impact of \$99,000 in FY 2008-2009: \$90,000 for contractual services to research, coordinate, facilitate and compile information and create the report on the feasibility of extending the date of offense for registration purposes; and \$9,000 for programming and maintenance related to adding libraries as places from which residence exclusion zones are measured.

CJIC-The Criminal Justice Impact Conference determined there would be no prison bed impact as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOC, the department, particularly probation officers, spend a lot of time assisting sex offenders in finding an approved residence because of local ordinances (currently 126) that are more stringent than the statewide restriction. Supervising these offenders is much more difficult when they do not have a suitable residence. The bill's provision preempting the local ordinances and increasing the statewide restriction from 1000 to 1500 feet is a compromise, and will benefit sex offenders who are unable to find approved residences. It will also make it more manageable for law enforcement and probation officers to monitor.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 1, 2008:**

- Preempts to the state the adoption of residency exclusion zones for enumerated sexual offenders and predators.
- Repeals and abolishes all local ordinances that contain residency exclusion zones.
- Extends the current statewide residency exclusion zone around certain designated places from 1000 feet to 1500 feet.
- Provides enhanced penalties for certain offenders who are convicted of loitering or prowling within 600 feet of a place where children regularly congregate.
- Adds new offenders who are subject to conditional release supervision after incarceration.
- Expands the requirement for electronic monitoring while under community supervision for two additional offenses.
- Eliminates inability of a conditional releasee who is a sexual offender or predator to locate a residence as a defense to a community supervision violation allegation.

B. Amendments:

None.