

This CS provides that the commission and the sentencing court must impose additional restrictions for specified conditional releasees, probationers, and community controllees who committed sexual offenses with minors under the age of 16, which includes a prohibition on wearing a costume or acting in a manner that engages children at a public event involving children under 18 years of age without prior approval from the court. It also revises language providing additional residency restrictions for certain sexual predators and sexual offenders on conditional release, probation, or community control.

This CS provides electronic monitoring for probationers or community controllees whose victim is under 16 years of age, while they were 18 years or older.

This CS provides an effective date of October 1, 2008.

This CS creates s. 775.215 and amends ss. 775.21, 775.24, 794.065, 794.0701, 947.1405, and 948.30 of the Florida Statutes.

II. Present Situation:

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

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.² 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.³

The conditional release program requires certain inmates that are nearing the end of their sentence to be released under close supervision.⁴ Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one of a list of offenses⁵ including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender, or a violent career criminal; and 3) inmates who were found to be a sexual predator. The commission sets the

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

² Section 948.001 (5), F.S.

³ Section 948.001 (2), F.S.

⁴ Section 947.1405 (2), F.S.

⁵ The relevant offenses are listed in categories 1, 2, 3 and 4 of Rule 3.701 of the Florida Rules of Criminal Procedure. Included in these categories are the offenses of murder, DUI and BUI manslaughter, sexual battery, lewd or lascivious offenses, incest, sexual misconduct by a psychotherapist, robbery, carjacking, home invasion robbery, aggravated assault, aggravated battery, aggravated stalking and resisting an officer with violence.

length and conditions of release after reviewing information provided by the department. The department supervises the offender while on conditional release.

Currently sex offenders on probation or community control who are required to register do not have a loitering restriction.⁶ They have residence restrictions imposed by a condition of supervision, prohibiting them from residing within 1,000 feet of schools, day care centers, playgrounds, parks, or other places where children regularly congregate, as prescribed by the court. There are also local city and county ordinances which impose additional residence restrictions on sex offenders; some with as great as 3,000 feet restrictions and additional specified restricted areas including pools, recreational facilities, etc.

Sex offenders under supervision with victims under the age of 18 also have conditions restricting unsupervised contact with minors and restrictions from working or volunteering 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. The employment condition restricts these areas where supervised sex offenders may frequent for work or volunteer purposes, but does not currently limit them from visiting these areas for any other purpose.

Loitering and prowling is defined in statute as 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. 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. Violation of this statute constitutes a second degree misdemeanor.⁷

Currently conditional release does not provide loitering restrictions in the statutory required conditions for conditional release supervision.⁸ However, the commission has elected to impose the following condition on conditional release offenders with sex offenses, regardless of whether they are required to register: “You shall not live *or loiter* within 1,000 feet of, or work for pay or as a volunteer at, a school, day care center, park, playground, designated public school bus stop, restaurant with attached playground, amusement park, business establishment whose primary clients are children, or other places where children regularly congregate.” (emphasis added)

Although current statutes do not include language prohibiting children from visiting areas where children regularly congregate, the commission does impose a condition prohibiting sex offenders from loitering within 1,000 feet of, or work for pay or as a volunteer at, a school, day care center, park, playground, designated public school bus stop, restaurant with attached playground, amusement park, business establishment whose primary clients are children, or other places where children regularly congregate. There are currently no restrictions in statute prohibiting sex offenders with minor victims in participating in holiday events or entertaining at children’s

⁶ Section 948.30, F.S.

⁷ Section 856.021, F.S.

⁸ Section 947.1405, F.S.

parties; however there are restrictions imposed as conditions of supervision regarding contact with minors.⁹

III. Effect of Proposed Changes:

This CS expands the current statutory residency restrictions from 1,000 to 1,500 feet for sexual offenders and sexual predators and will also make the restrictions applicable to people who have committed additional offenses. The CS also provides that the adoption of residency distance limitations for persons convicted of sexual offenses is expressly preempted to the state. The CS provides that the statutory provisions establishing residency distance limitations supersede the distance limitations in any municipal or county ordinances. An offender who was convicted of a first degree felony or higher would commit a third degree felony by violating these restrictions. An offender who was convicted of a second or third degree felony commits a first degree misdemeanor by violating these residency restrictions.

This CS provides that certain sex offenders,¹⁰ whose victim was under the age of 16, will be prohibited from “loitering or prowling” 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. The department currently interprets “loitering” as remaining in an area for no obvious reason or purpose. These offenders will be found guilty of a first degree misdemeanor.

Sexual offenders on conditional release, probation, or community control, whose victim was under the age of 18, are prohibited from living 1,500 feet from any school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate.

This CS would allow the courts and commission to prohibit sex offenders from wearing costumes for certain holiday events. Specifically the bill names wearing Santa Claus costumes on or preceding Christmas, Easter Bunny costumes on or preceding Easter, or wearing a clown costume. The offender is also prohibited from entertaining at children’s parties.

This CS would require sex offenders on probation or community control to have mandatory electronic monitoring when their victim was under 16 years of age, while they were 18 years old or older at the time of the offense.

This CS would affect sex offenders (both on and off of supervision), the Department of Corrections, law enforcement agencies, school officials, child care facility owners or child care providers, the Florida Department of Law Enforcement, courts, and the Florida Parole Commission.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Section 947.1405 and 948.30, F.S.

¹⁰ Who were convicted of a violation of s. 787.01, 787.02, 794.011, 800.04, 827.071, or 847.0145, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 21, 2008:

- Removes the provision that provided sex offenders must notify the school board or child care faculty in writing before entering school grounds.
- Removes the definitions of transient and temporary residence from the bill.
- Removes the requirement for a search of the National Sex Offender Registry for placements on misdemeanor probation.
- Removes the requirement for approval of the polygrapher used for the purpose of conducting a polygraph to be approved by the Florida Parole Commission or the sentencing court.
- Removes additional address reporting requirements.
- Removes the provision that would prohibit sex offenders from speaking with children in parks.

- Provides that sexual predators found to be indigent may defer payments associated with court related fees.
- Provides a 1,500 residency restriction for sex offenders that preempts local ordinances.
- Provides residency restrictions for sex offenders on conditional release, probation or community control.
- Provides electronic monitoring for probationers or community controllees whose victim is under 16 years of age, while they were 18 years or older.

B. Amendments:

None.