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 Community Affairs Committee

BILL:	CS/CS/SB 320
INTRODUCER:	Community Affairs Committee, Criminal Justice Committee, and Senator Crist
SUBJECT:	Sexual Offenders and Predators
DATE:	April 14, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.			JU	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS) deals with regulation of sexual offenders, sexual predators, and other persons who have committed certain sex-related crimes. Its provisions include:

- Preemption of local residency limits for a person convicted of a sexual offense.
- Extension of the current statewide residency exclusion zone around certain designated places from 1,000 feet to 1,500 feet, excluding minor predators and offenders.
- Creation of misdemeanors prohibiting persons who have been convicted of certain sexual offenses from being in the proximity of children at places such as schools, parks, and playgrounds.
- Requirements for registration and reporting of a transient address if no permanent or temporary address is available.
- Correction of an error in the sexual predator criteria that excepts offenders who travel to meet a minor for sexual purposes from designation as a sexual predator.

- A requirement that the conditions of community supervision or conditional release for certain sexual offenders include prohibitions from visiting areas where children regularly congregate and from wearing costumes that appeal to children or entertaining at children's parties.

- A requirement that any sexual predator or sexual offender who is placed on community supervision must be evaluated and, if needed, treated by a qualified practitioner trained to treat sex offenders.

- A requirement to search the Dru Sjodin National Sex Offender Public Website when a person is placed on misdemeanor probation.

- A requirement that the polygraph examination required of conditional releasees who have committed certain sex offenses must be performed by a polygrapher who has been authorized by the Department of Corrections (DOC) and that the results must be provided to the offender's probation officer and therapist.

This bill creates sections 775.215 and 856.022 of the Florida Statutes. This bill substantially amends the following sections of the Florida Statutes: 794.065, 775.21, 943.0435, 943.04352, 944.606, 944.607, 947.1405, 948.30, 948.31, 985.481, and 985.4815.

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. 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. 794.011, F.S. (except false accusation of another under s. 794.011(10), F.S.).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- 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 upon 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.) (except traveling to meet a minor under s. 847.0135(4), 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.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.[1] During initial registration, a sexual predator or sexual offender who is not in custody of DOC, the Department of Juvenile Justice (DJJ), or a local jail is required to provide certain information including the "address of legal residence and address of any temporary residence, within the state or out of the state, including a rural route address and a post office box…" to the sheriff's department within 48 hours of sentencing or of establishing a residence. The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

Both sexual predators and sexual offenders must report any change of permanent or temporary residence within the state to the driver's license office within 48 hours. If a new permanent or temporary residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established. Temporary residence is defined as:

> …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 county sheriff or municipal police chief must notify day care centers and schools in a 1-mile radius of the sexual predator's permanent or temporary residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

DOC and DJJ are required to provide FDLE with information including "the offender's intended residence address, if known" six months prior to release from custody or commitment. The agencies must also provide FDLE with the "current or intended permanent or temporary address, if known" during the time of incarceration or residential commitment.

[1] The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.48, and 985.4815, F.S.

Section 947.1405, F.S., the conditional release statute, requires that certain inmates who are released prior to completion of the full term of their sentence of incarceration be maintained under close supervision during the duration of the term. Sexual predators and inmates who have committed certain sexual crimes are among those who are subject to conditional release supervision. The Parole Commission sets the length and terms of supervision and the conditional releasee is supervised by DOC. Statutorily-mandated conditions include a prohibition against certain sexual offenders whose victim was under 18 years old from having contact with children unless approved by the commission. The commission also imposes a special condition that prohibits these offenders from loitering within 1,000 feet of 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 place where children regularly congregate, and from working at or living within 1,000 feet of such places.

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. Community control is a form of intensive community supervision, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Probationers and community controlees who have committed certain sexual offenses are prohibited from residing within 1,000 feet of schools, day care centers, playgrounds, parks, or other places where children regularly congregate. There are also local city and county ordinances that impose additional residence restrictions, including wider exclusion zones and additional areas of exclusion. Such offenders who have 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 supervised sex offenders from working or volunteering at these places, but does not currently limit them from visiting for any other purpose.

Section 948.30(1)(e), F.S., restricts sex offenders who are on conditional release or in community supervision from having contact with children if their victim was less than eighteen years old. Section 794.065, F.S., prohibits certain sex offenders who are not under supervision from residing within 1000 feet of a school, day care center, park, or playground. Also, s. 775.21(10)(c), F.S., prohibits certain designated sexual predators who are not under supervision from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. However, there are no other restrictions prohibiting sex offenders who are not under supervision from having contact with children, including participating in holiday events or entertaining at children's parties while wearing costumes designed to appeal to children.

"Loitering and prowling" is a second degree misdemeanor prohibited by s. 856.021, F.S. The elements required to be proven for conviction are that the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warranted justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Among circumstances that 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 him or herself, or manifestly

endeavors to conceal him or herself or any object. Because it is a misdemeanor, all elements of the offense must be committed in the officer's presence prior to arrest. An unusual requirement of the statute is that the law enforcement officer must give the suspect an opportunity to dispel any alarm or immediate concern by requesting the suspect to identify him or herself and to explain his or her presence or conduct.

Section 948.30(2)(a), F.S., requires that a court-ordered treatment program for a probationer or community controlee who committed a specified sexual offense must include participation in at least annual polygraph examinations. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, if 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 a violation of community 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 controlees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, it must require outpatient counseling as a term or condition of community supervision for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child, or prostitution. The statute specifies that this counseling can be obtained from a community health center, a recognized social service agency providing mental health services, a private mental health professional, or through other professional counseling.

Section 943.04352, F.S., requires that the public or private entity which provides misdemeanor probation services must conduct a search of an offender's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE when the offender is placed on probation for a misdemeanor.

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 frequent those places. It is logical that removing the offender from close proximity to children will both lessen the opportunity and reduce the temptation for the offender 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 person 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.

Constitutional and other challenges to state sex offender residency restrictions have been largely unsuccessful. In *Doe v. Miller*, the only challenge to reach a federal circuit court to date, the United States Court of Appeals for the Eighth Circuit held that nothing in the Constitution prevented Iowa from using its police powers to establish residence restrictions against sex offenders in furtherance of the health and safety of the state's citizens.[2]

In Florida, state law prohibits persons who have committed certain sex offenses from residing within 1,000 feet of designated places.[3] 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.[4] 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 1,000 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 1,000 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 Parole 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 1,000 feet of an offender's residence and are prohibited from establishing new bus stops within the proscribed distance.

[2] *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005). The Iowa statute at issue in *Miller* precluded sexual offenders from residing within 2,000 feet of designated locations.
[3] Section 794.065, F.S.
[4] Section 947.1405(7)(a)2., F.S.

- *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. The 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.

The 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. The DOC and the Department of Education have developed a process to identify whether an offender's residence or proposed residence is within 1,000 feet of a school bus stop. In addition, 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-Restriction 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 10 counties are completely covered by a 2,500-foot residence exclusion, including Miami-Dade, Polk, and Duval counties. The most common distance is 2,500 feet. In addition to increasing the distance, some ordinances add additional places from which measurement is made.

The Duval county 2,500-foot residence exclusion was recently challenged.[5] The court concluded that the ordinance was unconstitutional on substantive due process grounds.[6] The court reasoned that no rational basis for the ordinance existed because the Florida Legislature had "already determined that a 1,000 foot residency restriction was sufficient to make it impossible for an offender to see and fixate his deviant intentions on a child."[7] Miami-Dade County and Broward County residence exclusion ordinances were also recently challenged, but the cases were settled and withdrawn.

The varying local ordinances setting forth residency restrictions pose significant problems for DOC. In addition to ensuring compliance with the statewide 1,000-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.

[5] *State v. Schmidt*, Case No. 16-2006-MO-010568-AXXX (Duval County Circuit Court, October 11, 2007)
[6] *Id.* at 40.
[7] *Id.* at 39.

State Preemption of Local Ordinances

A local ordinance may be declared invalid for inconsistency with state law in two distinct ways:

- If the Legislature has preempted a particular subject area; or
- Where the local government specifically conflicts with the state statute.[8]

The local government may regulate matters already regulated by a state statute, provided that the Legislature has not preempted the area, either expressly or by implication.[9] Preemption takes an area in which local government might otherwise act and reserves that area for regulation exclusively by the Legislature.[10] In *Schmidt*, the Duval County Circuit Court concluded that, although the Legislature had not expressly preempted sex offender registry restrictions, the State's legislative scheme governing sex offenders and predators was "so pervasive that it demonstrates the Legislature's intent to preempt the field of sex offender and sexual predator regulation."[11]

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 775.215, F.S., which expressly preempts to the state the adoption of residency distance limitations 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). As previously indicated, the Legislature arguably has already preempted by implication the field of sexual offender and predator regulation.[12] This provision makes clear the intent of the Legislature to completely occupy the field of sexual offender and predator residency distance limitations, and eliminates the disparity in state and local ordinances.

Section 2 amends s. 794.065, F.S., by creating a new subsection that is applicable to offenses committed on or after October 1, 2009. The list of offenses to which the residency exclusion 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. The new subsection does not include computer pornography and traveling to meet a minor under s. 847.0135, F.S. A violation of similar laws of other jurisdictions also offenses triggers the 1,500 foot residency restriction.

For persons who are convicted of any of the enumerated offenses when the victim is under 16 years of age (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, 2009, the residency exclusion is extended from 1,000 feet to 1,500 feet. A sexual offender or sexual predator is excluded from this prohibition if the victim was less than 16 years of age and the predator or offender was a minor. Measurement of the new

[8] 12A FLA. JUR 2D *Counties*, Etc. s. 181 (2008).
[9] *Id.*
[10] *Pinellas County v. City of Largo*, 964 So. 2d 847, 853 (Fla. 2d DCA 2007).
[11] *Schmidt*, Case No. 16-2006-MO-010568-AXXX at 31.
[12] *See* text accompanying footnotes 9-15.

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 3 creates s. 856.022, F.S., which includes several new crimes classified as first degree misdemeanors. The section applies only to persons who have previously been convicted of a crime that is a qualifying offense for designation as either a sexual offender or a sexual predator and whose victim was under 18 years of age. This includes offenders who are designated as a sexual offender or a sexual predator as well as those who are not so designated for a reason such as commission of the qualifying offense prior to the effective date of the designation laws. Persons who have been pardoned or whose conviction was set aside in a post-conviction proceeding are excepted from the statute.

The new misdemeanor of loitering and prowling by a person convicted of a sexual offense is an aggravated form of loitering and prowling, which is a second degree misdemeanor prohibited by s. 856.021, F.S. The crime requires proof of the additional elements that it was: (1) committed by a person who had previously been convicted of one of the qualifying offenses, and (2) committed within 300 feet of a place where children regularly congregate. The bill specifies that "place where children regularly congregate" includes, but is not limited to, schools, day care centers, playgrounds, and parks.

The second new misdemeanor provides that it is unlawful for a person who committed one of the qualifying crimes and whose offense was committed on or after July 1, 2009 to:

> 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 with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature.

The third new misdemeanor prohibits knowingly being in, or on the grounds of, a child care facility or pre-K through 12 school when it is in operation without: (a) giving written notification of intent to be present to the school board, superintendent, principal, or child care facility owner; (b) notifying the owner or the principal's office when arriving and departing the premises; and (c) remaining under direct supervision of a school official when in the vicinity of children. An exception is made for voting and for picking up and dropping off the person's own children or grandchildren.

Section 4 amends s. 775.21, F.S., the sexual predator statute, to clarify the meaning of "temporary residence" and to add references to and a definition of "transient residence." The definition of "temporary residence" is amended to provide "vacation, business, or personal travel destinations in or out of Florida" as examples of temporary residences. "Transient residence" is newly defined as:

> 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. The term may include, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

This section of the bill also makes amendments throughout s. 775.21, F.S., to require registration and notification of transient addresses in the same manner as is currently required for permanent or temporary addresses. It also provides that a sexual predator who vacates a temporary or transient residence, or who gives notice of intent to do so but does not, must provide notice in the same manner as is currently required for those vacating a permanent residence.

This section also includes an amendment to correct an error in the sexual predator criteria that are listed in s. 775.21(4), F.S. Currently, a person who travels to meet a minor for sexual purposes in violation of s. 847.0135(4), F.S., is excepted from designation as a sexual predator. The exception was created to apply to owners of computer services (such as an Internet service provider) that a subscriber uses in violating the child pornography statute. This was formerly s. 847.0135(4), F.S., but was moved to subsection (6) by amendments made in the Cybercrimes Against Children Act of 2007 and Chapter 2008-172, Laws of Florida, relating to exploited children. The statutory reference in the sexual predator criteria was inadvertently not amended, resulting in the exception of a serious offense from the criteria for designation as a sex predator.

Section 5 amends s. 943.0435, F.S., the sexual offender statute, to incorporate the amendments made to the sexual predator statute in Section 2 of the bill.

Section 6 amends s. 943.04352, F.S., to require that the entity that provides misdemeanor probation services must search the name of an offender against the "Dru Sjodin National Sex Offender Public Website" maintained by the United States Department of Justice when the court places the offender on misdemeanor probation. This is in addition to the existing requirement to search the FDLE Internet site that maintains registration information regarding sexual predators and sexual offenders.

Section 7 amends s. 944.606, F.S., to require more specificity in the residence information that must be provided to law enforcement agencies by DOC prior to the release of a person who was convicted of committing certain sexual offenses. The offenses are the same as the prerequisite offenses in Section 1 of the bill. DOC is currently required to provide "the offender's intended residence address, if known." The amendment requires notice of the:

> address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; …

Section 8 amends s. 944.607, F.S., to add disclosure of a transient address or current or known future temporary address to a sexual offender's existing requirement for registering with DOC when entering community supervision and reregistering with the local sheriff's office thereafter.

Section 9 amends s. 947.1405, F.S., to require that the polygraph examination that is required of conditional releasees who have committed certain sex offenses must be performed by a polygrapher who has been authorized by DOC, and that the results must be provided to the probation officer and the therapist.

This section also requires the Parole Commission to order certain additional conditions of conditional release supervision if the crime for which the releasee is subject to conditional release was committed on or after July 1, 2009, and he or she has been convicted at any time of an enumerated sexual offense when the victim was under 18 years of age. The enumerated offenses are the same as the prerequisite offenses in Section 1 of the bill. An exception is made for releasees who were 21 years old or younger and whose victim was 16 or 17 years old at the time the offense was committed.

The first new condition is a prohibition from "visiting areas where children regularly congregate, including, but not limited to, schools, day care centers, parks, and playgrounds." An exception is made for attendance at religious services, which are defined in s. 775.0861, F.S. as "…a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion." The Parole Commission is authorized to designate additional locations to protect a victim. In essence, this provision of the bill codifies the commission's existing practice of setting special terms of conditional release. However, the prohibition against "visiting" one of the places is more restrictive to the releasee than "loitering" that is currently prohibited by the commission.

The second new condition prohibits an affected conditional releasee from distributing candy or other items to children at Halloween; wearing a Santa Claus or Easter Bunny costume, or other costume to appeal to children, on or preceding Christmas or Easter; or entertaining at a children's party or wearing a clown costume at any time during the year.

Section 10 amends s. 948.30, F.S., relating to additional conditions of probation or community control for certain sexual offenders, to include the same changes as are made concerning conditions of control release in Section 7 of the bill. The analysis of the effects of Section 7 is applicable to this section, except that the conditions of probation and community control do not currently have a "loitering" prohibition as a condition of supervision unless it was specifically imposed by the sentencing court.

Section 11 amends s. 948.31, F.S., concerning court-ordered sex offender treatment for certain sex offenders on community supervision in the following ways:

- The category of offenders who must be evaluated to determine whether there is a need for treatment is expanded to include all sexual predators and sexual offenders.

- An evaluation is required, without need for a diagnosis.

- If determined to be appropriate, the court must order sex offender treatment rather than outpatient counseling.

- If sex offender treatment is ordered, it must be obtained from a qualified practitioner as defined in s. 948.001(6), F.S., [13] who is specifically trained to treat sex offenders. [14] Current law requires outpatient counseling by a community mental health center, a recognized social service agency providing mental health services, or a private mental health professional, or other professional counseling. Providers are not currently required to have special training in treating sex offenders.

- Prohibits treatment by a provider who has him or herself been convicted or adjudicated delinquent for committing one of the offenses included within the definition of "sex offender" at s. 943.0435(1)(a)1.a.(I), F.S.

- Requires the court to impose a restriction against contact with minors if sexual offender treatment is recommended. This requirement applies to all offenders, not just those whose victim was under 18 years old as is the case with other statutory prohibitions against contact with minors.

Section 12 amends s. 985.481, F.S., to provide more specificity as to residence information that must be provided to law enforcement by DJJ prior to the release of a sexual offender from residential commitment. It accomplishes the same purpose as the amendment to s. 944.606, F.S., in Section 5 of the bill does for adult offenders released from DOC.

Section 13 amends s. 985.4815, F.S., to add disclosure of a transient address or known future temporary address to a juvenile sexual offender's existing requirement to register with DJJ when under supervision by DJJ and to reregister with the local sheriff's office thereafter. It accomplishes the same purpose as the amendment to s. 944.607, F.S., in Section 6 of the bill does for adult offenders supervised by DOC.

Section 14 establishes the effective date as July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[13]The definition is: "… a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act."

[14] The Florida Department of Health's Board of Psychology rescinded Rule 64B19-18.001, F.A.C., which specified criteria for psychologists to designate themselves as qualified practitioners for the purpose of evaluating and treating sex offenders, on October 26, 2007.

D. Other Constitutional Issues:

The new criminal offenses that are created in Section 1 of the bill are subject to analysis under the ex post facto clauses of the Florida and United States Constitutions because they are dependent upon prior conviction of a criminal offense. In general, the ex post facto clauses prohibit prosecution of a person for actions that were not criminal at the time they were committed or an increase in the punishment for a crime after a person commits the crime. It does not appear that the new misdemeanor of loitering or prowling would violate the ex post facto clauses because it merely enhances the penalty when the existing crime of loitering or prowling is committed by a former sex offender in one of the proscribed areas. The new offense of knowingly being present in a child care facility or school without giving written notification is a regulatory measure analogous to requiring sexual offenders and sexual predators to register with the government, which has been found to be constitutional. However, the new offense that prohibits persons previously convicted of certain sexual offenses from knowingly approaching, contacting or communicating with a child at a park or playground is more problematic and an effective date is provided to insulate it from ex post facto challenge.

Applying a 1,500-foot restriction to offenders with offense dates between October 1, 2004 and September 30, 2009, in the event they move, may lead to ex post facto challenges. The fact that they have an intervening act of relocating likely does not cure the problem as their actual offense dates predate the effective date of the act.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional employment costs could be incurred by child care facilities and schools that must provide direct supervision of persons who are subject to the restrictions against unsupervised contact with children in such facilities.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the impact of the bill on the prison population. However, a similar bill from the 2008 session was forecast to have an insignificant prison bed impact.

FDLE estimates that implementing the bill's changes in registration and notification requirements would cost a total of $63,743, with $37,093 attributable to notification and documentation of registrants and $26,640 attributable to system programming and maintenance.

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 Community Affairs on April 14, 2009:

- Preempts local residency limits for a person convicted of a sexual offense.
- Extends the current statewide residency exclusion zone around certain designated places from 1,000 feet to 1,500 feet, excluding minor predators and offenders.

CS by Criminal Justice on January 14, 2009:

- Clarifies the new loitering and prowling offense for clarity and to avoid issues of unconstitutionality.
- Clarifies that the prohibited contact or communication in a public park must be made with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature; removes the exemption for a parent with his or her own child; and provides a date for the qualifying offense.
- Amends s. 775.21(4), F.S., to correct an error in the sexual predator criteria that creates an exception for the offense of travelling to meet a minor for sexual purposes.
- Removes the requirement for approval of the polygrapher by the court or commission
- Revises the qualifying offenses that subject certain sexual offenders who are supervised on conditional release, probation or community control to special conditions of supervision, and clarifies those conditions.
- Adopts the definition of "qualified practitioner" in s. 948.001(6), F.S., for purposes of court-ordered sex offender treatment pursuant to s. 948.31, F.S.; provides that treatment cannot be provided by a practitioner who has been convicted of a crime that is listed in s. 943.0435, F.S., as a qualifying offense for being designated as a sexual offender; and requires a prohibition against contact with children if treatment is ordered.

B. Amendments:

None.