

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429

Sexual Offenses Involving the Internet

SPONSOR(S): Fetterman

TIED BILLS:

IDEN./SIM. BILLS: SB 932

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Policy Council			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

Section 948.30(1)(g), F.S., currently prohibits persons convicted of certain sexual offenses *who are on some form of community supervision* (i.e., probation, community control, etc.) from accessing the Internet.

There are no statutes that prohibit persons who have been convicted of a crime *and who are not on community supervision* from accessing the Internet. However, Florida law does require sexual offenders to register their e-mail addresses and instant message names with the Florida Department of Law Enforcement (FDLE) prior to using such address or name.

HB 429 makes it a 3rd degree felony for anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense, to:

- Maintain, contract for, or access in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintain, contract for, or access in any way a wireless Internet connection in any location for any purpose.

The bill provides an exception by permitting the above-described persons to maintain, contract for, or access an Internet connection for the sole purpose of or requirements for employment. The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the impact of the bill could potentially be significant. See Fiscal Section for additional information.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Law

Laws Pertaining to Individuals No Longer Under Supervision

Currently, Florida law does not prohibit individuals *who are not on any type of community supervision* (i.e., probation, community control, etc.) from accessing the Internet. Florida law does however, require all sexual offenders, even those no longer under any form of supervision, to register their e-mail addresses¹ and instant message names² with the Florida Department of Law Enforcement (FDLE) prior to using such address or name.³

Laws Pertaining to Individuals Currently Under Supervision

Florida law does prohibit certain individuals *who are on community supervision* from accessing the Internet. Specifically, s. 948.30(1)(h), F.S., requires courts to impose a condition of supervision prohibiting probationers and community controllees whose crime is committed on or after July 1, 2005, and who are placed under supervision for specified sexual offenses⁴, from accessing the Internet or other computer services until the offender's sex offender treatment program⁵, after a risk assessment is completed, approves and implements a safety plan for such access.⁶ This statute is mandatory in that it *requires* courts to impose the condition on offenders who meet the above criteria.

It should be noted that courts have the discretion to impose *any* condition of supervision on *any* type of offender if the court deems such condition proper.⁷ Thus, even if an offender does not meet the criteria

¹ "Electronic mail address" is defined in accordance with s. 668.602, F.S., as "a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered." See ss. 775.21, 943.0435 and 944.607, F.S.

² "Instant message name" is defined as "an identifier that allows a person to communicate in real time with another person using the Internet." See ss. 775.21, 943.0435 and 944.607, F.S.

³ See generally, ss. 775.21, 943.0435 and 944.607, F.S., which require sexual offenders to register specified information with law enforcement.

⁴ Chapter 794 (sexual battery), s. 800.04 (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071 (sexual performance by a child), s. 847.0135(5) (lewd or lascivious exhibition using a computer), or s. 847.0145, F.S. (selling or buying of minors).

⁵ Section 948.30(1)(c), F.S., requires courts to impose a condition requiring probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135, or s. 847.0145, F.S., to participate in and successfully complete a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders.

⁶ Identical language is contained in s. 947.14.05, F.S., which pertains to conditional releasees.

⁷ See s. 948.03(2), F.S.

contained in s. 948.30(1)(h), F.S., a judge could impose a condition of probation prohibiting or limiting an offender's access to the Internet so long as the court deemed it proper.

Other State Laws

Aside from Florida, other states have statutes that prohibit or limit one's use of the Internet.⁸ The majority of these statutes only apply to individuals convicted of certain sexual offenses who are under some form of community supervision.⁹ However, as described below, there are a handful of states that have enacted legislation that limit or prohibit a person's access to the Internet, even when the person is no longer under supervision.

Nebraska

In 2009, Nebraska enacted a law making it a Class I misdemeanor for a registered sex offender who is convicted of certain offenses to knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service.¹⁰

This statute was recently challenged and on December 30, 2009, the court preliminarily enjoined the State of Nebraska from enforcing it. See "Constitutional Issues" for further discussion.

New Jersey

New Jersey requires courts to impose the following conditions when sentencing registered sexual offenders and offenders sentenced to lifetime supervision where there has been a finding that a computer or other device with Internet capability was used to facilitate the commission of the crime:

- A prohibition on accessing or using a computer or any other device with Internet capability without prior written approval of the court. Persons on probation or parole may use a computer or any other device with Internet capability in connection with that person's employment or search for employment with the prior approval of the person's probation or parole officer.
- A requirement that the person submit to periodic unannounced examinations of the person's computer or any other device with Internet capability by a probation officer, parole officer, law enforcement officer, or computer technology specialist.
- A requirement that the person submit to the installation, at the person's expense, of hardware or software systems to monitor the person's Internet use.
- A requirement that the person submit to any other appropriate restrictions concerning the persons' use or access of a computer or any other device with Internet capability.¹¹

Persons who violate the above conditions commit a crime of the fourth degree.¹² It should be noted that these conditions apply to qualifying offenders who are on community supervision as well as to those no longer on community supervision.

North Carolina

North Carolina prohibits registered sexual offenders from accessing commercial social networking websites where the offender knows that the site permits minor children to become members, or to create or maintain personal web pages.¹³ Sexual offenders who violate this provision commit a felony.¹⁴ This provision applies to all registered sexual offenders, not just those on community supervision.

⁸ See, e.g., 46-18-207, Montana Code; 176A.410 and 176A.413, Nevada Revised Statutes; s. 65.10, Penal Laws of New York; 12.1-32-07, North Dakota Century Code; 730 ILCS 5/3-3-7, Illinois Compiled Statutes.

⁹ See

¹⁰ See 28-322.05, Nebraska Revised Statute, effective January 1, 2010. The statute specifies that any second or subsequent conviction of this section is a Class IIIA felony.

¹¹ See 2C:43-6.6, New Jersey Statutes, effective February, 2007.

¹² *Id.*

¹³ See s. 14-202.5, North Carolina General Statutes, effective December 1, 2008.

¹⁴ *Id.*

Effect of the Bill

HB 429 makes it a 3rd degree felony¹⁵ for anyone convicted of an offense contained in Chapters 794¹⁶, 800¹⁷, 827¹⁸, or 847¹⁹, F.S., and who used the Internet in the commission of such offense to:

- Maintain, contract for, or access in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintain, contract for, or access in any way a wireless Internet connection in any location for any purpose.

The bill provides an exception by permitting the above-described persons to maintain, contract for, or access an Internet connection for the sole purpose of or requirements for employment.

The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision.

B. SECTION DIRECTORY:

Section 1. Creates s. 794.067, F.S., relating to persons convicted of certain offenses; prohibition on Internet access.

Section 2. This bill takes effect on October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, this bill makes it a 3rd degree felony for anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense to maintain, contract for, or access the Internet. The bill applies to individuals who are currently under community supervision as well as those who are no longer under supervision. No data exist to indicate how many individuals have been convicted of the above offenses where commission of the offense involved the use of the Internet. However, the impact of the bill could be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

¹⁶ Chapter 794, F.S., contains offenses related to sexual battery.

¹⁷ Chapter 800, F.S., contains offenses related to lewd and lascivious behavior and indecent exposure.

¹⁸ Chapter 827, F.S., contains offenses related to child abuse.

¹⁹ Chapter 847, F.S., contains offenses related to obscenity.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits anyone convicted of an offense contained in Chapters 794, 800, 827, or 847, F.S., and who used the Internet in the commission of such offense to maintain, contract for, or access the Internet. Internet providers may see a decline in subscribers.

D. FISCAL COMMENTS:

None.

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 municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Currently, Florida caselaw is silent as to whether prohibiting persons who are no longer under supervision from accessing the Internet raises constitutional concerns. However, caselaw from other states provide guidance.

As noted above, the State of Nebraska recently enacted a statute making it a Class I misdemeanor for a registered sex offender who is convicted of certain offenses to knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service.

The statute was to go into effect on January 1, 2010. However, prior to taking effect, the statute was challenged and on December 30, 2009, the United States District Court for the District of Nebraska preliminarily enjoined the State of Nebraska from enforcing it. In its opinion, the court stated "there are serious First Amendment²⁰ issues raised by Nebraska's attempt to prohibit offenders from using Internet sites when those offenders have served their sentences and are no longer under criminal law supervision."²¹

The court also stated that the Internet access restriction was "onerous" and was "clearly punishment."²² Although not specifically addressed by the court, imposing such restrictions on those who have completed their sentences and are no longer on any form of supervision could raise double jeopardy²³ concerns

Of note is that Nebraska's statute prohibited persons from using certain social networking web sites, instant messaging, or chat room services – it did not prohibit a person from accessing the Internet altogether.

²⁰ The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate.

²¹ *John Doe, et. al., v. Nebraska*, 2009 WL 5184328 (USDS – D. Ne, 2009).

²² *Id.*

²³ The Double Jeopardy Clause of the United States Constitution's Fifth Amendment prohibits the imposition of multiple punishments for the same offense in a single proceeding. The purpose of this prohibition is to ensure that sentencing courts do not exceed, by the device of multiple punishments, the limits prescribed by the legislative branch of government, in which lies the substantive power to define crimes and prescribe punishments. *Jones v. Thomas*, 491 U.S. 376 (1989).

The bill is very similar to the Nebraska statute in that it makes it a crime for anyone convicted of specified offenses, and who used the Internet in the commission of such offenses, to maintain, contract for, or access the Internet. The bill applies to persons who are no longer under any form of supervision and prohibits Internet access completely (with the exception of access related to employment). As such, the bill raises First Amendment and Double Jeopardy concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill prohibits certain offenders from:

- Maintaining, contracting for, or accessing in any way an Internet connection in his or her home, residence, or principal place of abode.
- Maintaining, contracting for, or accessing in any way a wireless Internet connection in any location for any purpose.

As drafted, an offender would be permitted to maintain, contract for, or access and Internet connection (hardwire connection) in any location outside of the offender's home, residence, or principal place of abode (library, etc.).

2. The bill prohibits certain offenders from *maintaining* an Internet connection in his or her home. This could be interpreted to preclude an offender from living with any person who owned or possessed a device that accessed the Internet (family members, roommates, etc).
3. Computers are no longer the only type of device that are capable of accessing the Internet. Advances in technology have made cell phones, televisions, video game systems, digital music players, etc., capable of accessing the Internet. These devices are oftentimes capable of accessing the Internet even if the person who owns the device has not specifically or contracted for an Internet service. As such, this bill could be interpreted to preclude offenders from possessing such devices.
4. The bill's prohibitions apply to persons convicted of specified crimes who used the Internet to commit those crimes. It is unclear who is responsible for determining whether a person "used the Internet" in committing one of the specified crimes.
5. The bill provides an exception to the Internet access prohibition by permitting access for the sole purpose of or requirements for employment. The bill does not provide such an exception for any other purpose (education, application for public benefits, etc.).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES