

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 87 Sexual Offenders

**SPONSOR(S):** Kravitz

**TIED BILLS:** IDEN./SIM. BILLS: SB 120; SB 146

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice	6 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	18 Y, 0 N	Kramer	De La Paz
3) Education K-20			
4) Public Safety Appropriations			
5) Appropriations			

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### SUMMARY ANALYSIS

Under current law, certain sex offenders under conditional release supervision are not permitted to reside within 1,000 feet of a "school, day care center, park, playground, or other place where children regularly congregate." HB 87 provides that a conditional releasee who is subject to the provisions of this bill may not relocate to a residence that is within 1,000 feet of a public school bus stop. If, on the effective date of the bill, any public school bus stop is located within 1,000 feet of the existing residence of a releasee, the district school board will be required to relocate the school bus stop. After the effective date of the bill, a district school board will be prohibited from establishing a school bus stop within 1,000 feet of the existing residence of a releasee. The bill also clarifies that the failure of the district school board to comply with this provision may not result in a violation of conditional release supervision.

The bill also makes it unlawful for any person who has been convicted of one of a list of specified sexual offenses against a victim under the age of 16 to reside within 1,000 feet of any school, day care center, park or playground. This provision applies only to sexual offenses that occur after October 1, 2004.

The effective date of the bill is October 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME** h0087a.ps.doc  
**DATE** February 4, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain: Relating to the issue of whether the bill would expand individual freedom, the bill would make it unlawful for a person who had been convicted of a list of specified sexual offenses to reside within 1,000 feet of a school, day care center, park, or playground. This would have the effect of restricting where these offenders could legally reside for the duration of their lives. The bill will also provide additional restrictions on where offenders on conditional release are permitted to reside for the duration of their supervision. Further, to the extent that the bill results in increased workload for district school boards or the Department of Corrections, it may be seen as failing to reduce government.

#### B. EFFECT OF PROPOSED CHANGES:

Conditional release program: Section 947.1405, F.S. creates the conditional release program. This program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.<sup>1</sup> The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.<sup>2</sup> The Department of Corrections supervises the offender while on conditional release.

For inmates convicted of certain sexual offenses<sup>3</sup> or offenses against children committed after October 1, 1995, who are subject to conditional release, section 947.1405(7)(a), F.S., also requires the Commission to impose the following conditions, in addition to any other terms and conditions it imposes:

1. Mandatory curfew;
2. *If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate;*
3. Participation in a sex offender treatment program;
4. Prohibition on contact with the victim;
5. Prohibition on unsupervised contact with children if certain conditions are met;
6. Prohibition on working at any school, day care center, park, playground, or other place where children congregate if the victim was under 18;
7. Prohibition on the possession of pornographic or sexually stimulating materials;
8. Submission of a DNA sample to the Florida Department of Law Enforcement;
9. Restitution to the victim; and
10. Submission to warrantless searches by the releasee's probation officer of the releasee's person, residence, or vehicle.

<sup>1</sup> Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

<sup>2</sup> The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

<sup>3</sup> Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

If the releasee successfully completes the conditional release program, the inmate is no longer supervised by the court or by the Department of Corrections. If a person on conditional release violates the conditions of his or her release, the violation may be referred to the Parole Commission. The releasee is entitled to a hearing before the Parole Commission or its hearing officer.<sup>4</sup> After a hearing, the Parole Commission may revoke the conditional release and return the releasee to prison, impose new conditions on the releasee, or allow conditional release to continue.

Information provided by the Department of Corrections revealed that, as of 11/30/02, there were 3,092 conditional releasees under active supervision of the Department of Corrections. Of these, 33 committed a sex offense against a minor victim and fit the criteria for application of the proposed new condition of supervision.

HB 87 specifies that certain sex offenders who are under conditional release and whose victims are under 18 years of age cannot live within 1,000 feet of a "*designated public school bus stop*". The bill provides that a conditional releasee who is subject to the provisions of the bill may not relocate to a residence that is within 1,000 feet of a public school bus stop. If, on the effective date of the bill, any public school bus stop is located within 1,000 feet of the existing residence of a releasee, the district school board will be required to relocate the school bus stop. After the effective date of the bill, a district school board will be prohibited from establishing a school bus stop within 1,000 feet of the existing residence of a releasee. The bill also clarifies that the failure of the district school board to comply with this provision may not result in a violation of conditional release supervision.

The bill also amends section 1006.22, F.S. relating to transportation of students to require each district school board to provide to the Department of Corrections the location of school bus stops.

#### Unlawful place of residence for persons convicted of certain sex offenses

Currently, there are no restrictions on where a sex offender who is not under supervision by the Department of Corrections can reside.<sup>5</sup> HB 87 creates a new section of statute which makes it unlawful for a person who is convicted of an enumerated sexual offense<sup>6</sup> committed after October 1, 2004 against a victim less than 16 years to reside within 1,000 feet of any school, day care center, park or playground. The offense is a third degree felony if the prior conviction for a sexual offense was a felony of the first degree or higher. The offense is a first degree misdemeanor if the prior conviction for a sexual offense was a second or third degree felony.

#### C. SECTION DIRECTORY:

Section 1: Amending s. 947.1405, relating to conditional release program; adding to condition of release for certain sexual offenders a prohibition against residing within 1,000 feet of a school bus stop.

Section 2: Creating s. 794.065, making it unlawful for persons convicted of certain sexual offenses to live within 1,000 feet of school, day care center, park or playground.

Section 3: Amending s. 1006.22 relating to safety and health of students being transported to require district school boards to provide the location of school bus stops to Department of Corrections.

Section 4: Providing effective date.

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<sup>4</sup> s. 947.141, F.S

<sup>5</sup> Offenders who are considered a "sexual predator" or a "sexual offender" as provided in statute, are required to notify the sheriff within 48 hours of a change in residence. Sections 775.21(6) and 943.0435 Failure to do so is a third degree felony.

<sup>6</sup> Offenses include violations of ss. 794.011, 794.05, 800.04, 827.071 and 847.0145.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures: By placing restrictions on where certain offenders on conditional release and certain convicted felons can live, there may be additional revocations of conditional release and convictions that may result in an unspecified number of offenders returning to or entering prison.

The Department of Corrections reports that its probation officer workload could increase and that there would be costs associated with developing the technology to comply with the requirements of the bill. The department did not provide a specific cost estimate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because school districts will be prohibited from placing or relocating a school bus stop within 1,000 feet of the residence of an offender, there may be additional workload on staff to develop alternative locations for bus stops.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If a person is convicted of a sexual offense against a victim under the age of 16 after October 1, 2004 and resides in a location within 1,000 feet of a school, day care, playground or park, that offender would have to move out of his or her residence in order to avoid committing a criminal offense.

### D. FISCAL COMMENTS:

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law

2. Other:

School districts do not currently report the location of school bus stops to any state agency. This bill would require each district school board to provide the Department of Corrections with the location of school bus stops. There is no standard format for maintaining this information throughout the 67 school districts

statewide. For example, staff from the Miami-Dade Public Schools Transportation Office indicated that they currently do not have a computerized routing system and would be unable to submit a map of their approximately 32,000 bus stops electronically. Further, staff from the Osceola County School District indicated that although they map their 5,199 school bus stops using Geographic Information Systems (GIS) software, this information could not be transferred electronically for proprietary and technological reasons. Both districts indicated that they would have to submit this information as a list of addresses where school bus stops are located.

School bus stop locations are changed or added throughout the school year for many reasons including requests from parents, changing student population and safety hazards being identified. The bill does not indicate how often the school districts are required to submit the location of bus stops to the Department of Corrections.

The bill prohibits a school district from establishing or relocating a school bus stop within a distance of less than 1,000 feet from the existing residence of certain offenders who are on conditional release. However, the bill does not require the Department of Corrections to provide school districts with information regarding the residences of offenders on conditional release. Therefore, it is not clear how the school districts would obtain information relevant to the placement of school bus stops.

An analysis of HB 87 by the Department of Corrections indicated the following:

The effect of this change [relating to school bus stops] will be to effectively prohibit the specified sex offenders from living in many cities and communities of Florida. The one thousand (1,000)-foot restriction from a school bus stop vastly expands the prohibited area and in smaller towns, may encompass much of the "livable" residential areas. School bus stops change each year and often during the school year to accommodate the transportation needs of students-which will require supervising officers to receive updates on all school bus stop changes.

An unintended consequence of this legislation will be the establishment of a "free zone" from 2 miles to within 1,000 feet of a school for sex offenders to reside - as most school districts only provide bus service to students living more than 2 miles from a school. Ironically, this could put sex offenders in the very neighborhoods where children would be walking to and from school.

The currently restricted areas [areas within 1,000 feet of a school, day care center, park or playground] are usually permanent in their location and supervising officers can plot these out to provide "restricted" living areas for sex offenders. This amended condition will be extremely difficult to monitor both from an administrative and logistical stand point and will be labor intensive for the supervising officer. Currently, most measurement of restricted areas is completed using a wheel device that measures point to point. Funding for technology that will allow computerized tracking of these offenders and restricted areas might be an initial cost factor, but would result in decreased manpower hours over the course of years and be an effective tool to enforce the restriction.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**