

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1247 CS

Sexual Offenders

**SPONSOR(S):** Rice

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1354

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Justice Appropriations Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Burns</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>7 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1247 modifies the conditions of supervision for a person who is on conditional release, probation or community control and has been convicted of an enumerated sexual offense. The bill provides stricter standards for supervised visits to require that a qualified practitioner complete a risk assessment, develop a safety plan, and actually recommend to the commission or the court for the supervised contact to occur. The bill provides that the Parole Commission or sentencing court may approve the offender having supervised contact with the child only if certain conditions are met and based upon the review of specified information. The commission and the court are prohibited from approving contact if such contact is not recommended by the qualified practitioner and approved of by a non-offending parent or legal guardian. However, the commission and the court may deny contact at any time.

Currently, s. 948.30, F.S. prohibits a person on probation or community control for a sexual offense from working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate. HB 1247 modifies this to prohibit working for pay or as a volunteer at any place where children regularly congregate, including but not limited to, a school, day care center, park, playground, pet store, library, zoo, theme park and mall.

The bill creates a new condition which prohibits a person under supervision from accessing the internet or other computer services until a qualified practitioner at the offender's sex offender treatment program has approved a safety plan for accessing the Internet or other computer service. This condition will apply to a releasee whose crime is committed on or after July 1, 2005, the effective date of the bill.

Additionally, the bill provides that any person convicted of or who had adjudication withheld for a violation of s. 794.011 (sexual battery) or s. 800.04 (lewd or lascivious offenses) or a violation of a similar law of another jurisdiction shall not be employed by the state.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill restricts the activities of criminal sexual offenders while subject to conditional release, probation or community control.

#### B. EFFECT OF PROPOSED CHANGES:

Section 947.1405(7)(a), F.S., establishes the terms of conditional release supervision for offenders who have been convicted of sexual battery, lewd or lascivious offenses committed upon or in the presence of someone under 16, a sexual performance by a child, and the selling or buying of minors which includes child pornography. Similarly, s. 948.30, F.S., establishes the terms and conditions of probation or community control for offenders who violate those same statutes. In addition to any other conditions imposed, the following special conditions are imposed by the Parole Commission for sexual offenders on conditional release and by the sentencing court for sexual offenders who are on probation or community control:

- A mandatory curfew.
- If the victim was a minor, a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate.
- Active participation in and successful completion of a sex offender treatment program.
- A prohibition on having contact with the victim unless approved by the victim, the offender's therapist, and the sentencing court.
- If the victim was under 18, a prohibition against direct contact or association with children younger than 18 until the offender successfully completes a treatment program, the person responsible for the child's welfare has been advised of the nature of the crime, that adult is present during all contact or association with the child, and that adult has been approved by the commission.
- If the victim was under the age of 18, a prohibition on working for pay or as a volunteer at any school, day care, park, playground, or other place where children regularly congregate.
- A prohibition on viewing, owning, or possessing pornography or obscene materials.
- A requirement that the offender submit a specimen to FDLE for registration in the FDLE DNA database.
- A requirement that the offender make restitution to the victim for any medical or psychological services.
- Submission to a warrantless search by the community control or probation officers.
- Several additional conditions that apply only to offenders placed on conditional release, probation, or community control for a crime committed on or after October 1, 1997.

HB 1247 amends ss. 947.1405 and 948.30, F.S., by changing the conditions under which an offender might have supervised contact with a child under the age of 18 if the victim was under the age of 18. For offenders on conditional release, the Parole Commission would be permitted to provide authorization for supervised contact, and for offenders on probation or community control, the court would be permitted to approve supervised contact with the minor with the recommendation for contact by a qualified practitioner based upon a risk assessment and if the sex offender is either currently enrolled in or has successfully completed a sex offender therapy program. The commission and court are prohibited from approving supervised contact between the sex offender and a child if such contact is not recommended by the qualified practitioner and approved by a non-offending parent or legal guardian. However, the commission and court may deny supervised contact at any time. When considering whether or not to approve contact with a child, the commission or the court must review the following:

- A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that includes the findings of the risk assessment addressing each of the following components:
  - The sex offender's current legal status;
  - The sex offender's history of adult charges with apparent sexual motivation;
  - The sex offender's history of adult charges without apparent sexual motivation;
  - The sex offender's history of juvenile charges, whenever available;
  - The sex offender's treatment history including a consultation with the sex offender's treating or most recent treating therapist;
  - The sex offender's mental status;
  - The sex offender's mental health and substance-abuse history as provided by the Department of Corrections;
  - The sex offender's personal, social, education, and work history;
  - The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;
  - A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;
  - The child's preference and relative comfort level with the proposed contact, when age-appropriate;
  - The parent's or legal guardian's preference regarding the proposed contact; and
  - The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.
- A recommendation by the qualified practitioner that is made as a part of the risk assessment report as to whether supervised contact with the child should be approved.
- A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of a risk assessment.
- A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, and the child, when age appropriate, which details the acceptable conditions of contact between the offender and the child. The safety plan must be reviewed and approved by the Department of Corrections prior to submission to the commission or the court.
- Evidence that the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the offender.

Additionally, the bill prohibits the commission or the court from appointing a person to conduct a risk assessment or to accept a risk assessment from a person who has not demonstrated that they have met the requirements of a qualified practitioner as defined by this bill.

The bill amends ss. 947.1405 and 948.30, F.S., by removing the term “therapist specially trained to treat sex offenders” or “specially trained therapist” and replacing it with the term “qualified practitioner.” This bill further specifies that the term “qualified practitioner” means a psychiatrist licensed under ch. 458, F.S., a psychologist licensed under ch. 490, F.S., or a social worker, mental health counselor, or a marriage and family therapist licensed under ch. 491, F.S., who, as determined by rule of the respective boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders.

The bill requires that a qualified practitioner complete a risk assessment of an offender for consideration by the parole commission or the court when deciding whether or not to approve supervised contact with a child. Sections 947.005 and 948.001, F.S., are amended to provide a definition for the term “risk assessment” specifying that the term means an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

The bill defines the term “safety plan” to mean a written document that is prepared by a qualified practitioner, in collaboration with the sex offender, the child’s parent or legal guardian, and, when appropriate, the child, which establishes clear roles and responsibilities for each individual who is involved in any contact between the child and the sex offender.

The bill also prohibits a releasee whose crime was committed on or after July 1, 2005, from accessing or using the Internet or similar computer services until the qualified practitioner approves a safety plan for the offender’s use of the Internet. Although existing statutory language does prohibit a sexual offender from viewing, owning, or possessing computer programs and services, it does not appear that chat rooms, e-mails, and web cameras are necessarily precluded.

Currently, s. 948.30, F.S. prohibits a person on probation or community control for a sexual offense from working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate. HB 1247 modifies this to prohibit working for pay or as a volunteer at any place where children regularly congregate, including but not limited to, a school, day care center, park, playground, *pet store, library, zoo, theme park and mall.*

The practical effect of this legislation might be to lessen the frequency with which minors have supervised contact with sexual offenders. According to the Parole Commission, there are 368 sexual offenders on conditional release. The Department of Corrections states that as of January 31, 2005, there were 8,238 sexual offenders on probation or community control.

Section 112.011, F.S. provides that, with certain exceptions, a person shall not be disqualified from employment by the state, and of its agencies of political subdivisions, or any municipality, solely because of a prior conviction of a crime. The section provides that a person may be denied employment by reason of the prior conviction for a crime if the crime was a felony or a first degree misdemeanor and directly related to the position of employment sought. HB 1247 amends this provision to provide that any person convicted of, or who had adjudication withheld for any violation of s. 794.011, relating to sexual battery or s. 800.04, F.S., relating to lewd or lascivious offenses or a violation of a similar law of another jurisdiction shall not be employed by the state.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 947.005, F.S. to define terms “qualified practitioner”, “risk assessment” and “safety plan”.

Section 2. Amends s. 947.1405, F.S. relating to conditional release.

Section 3. Amends s. 948.001, F.S. to define terms “qualified practitioner”, “risk assessment” and “safety plan”.

Section 4. Amends s. 948.30, F.S., relating to terms of probation or community control.

Section 5. Reenacts s. 775.21, F.S., for the purpose of incorporation by reference.

Section 6. Amends s. 112.011, F.S. relating to employment of persons convicted of certain offenses.

Section 7. Provides effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Department of Corrections has indicated that this bill would not have a fiscal impact on the department.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Criminal Justice Committee adopted several amendments to the bill which modified the provisions relating to conditions of supervised visitation. The amendments provided that the qualified practitioner, rather than the Parole Commission is required to approve the adult who is responsible for the child's welfare and who has agreed to supervise the child and also must determine that the supervised contact is in the best interest of the child. The amendments provided that the adult responsible for the child's welfare must *personally* supervise the child. The amendments also restored language currently in law which requires that the adult who is legally responsible for the child's welfare be advised of the nature of the crime. The amendment clarifies that the qualified practitioner must approve a safety plan in order for the offender to be permitted to access the Internet. The amendments modified the definition of the term "qualified practitioner" and removed the requirement that the qualified practitioner be a member of the Association for the Treatment of Sexual Abusers.

The Justice Appropriations Committee adopted two amendments during the 4/12/05 meeting to expand the existing list of places where child sex offenders cannot work.

The Justice Council adopted a strike-all amendment which further modified the conditions under which a sexual offender on conditional release, probation or community control can have supervised contact with a minor. Additionally, s. 112.011, F.S. was amended to provide that any person convicted of or who had adjudication withheld for a violation of s. 794.011 (sexual battery) or s. 800.04 (lewd or lascivious offenses) or a violation of a similar law of another jurisdiction shall not be employed by the state.