

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 174

SPONSOR: Criminal Justice Committee and Senator Smith

SUBJECT: Sexual Offenders/School Bus Stops

DATE: February 25, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>CA</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>APJ</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

The CS/SB 174 amends the conditional release statute (s. 947.1405, F.S.) to specify that certain sex offenders under conditional release cannot live within 1,000 feet of a school bus stop. Under current law such offenders are prohibited from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate.

The CS also creates s. 794.065, F.S., prohibiting persons convicted for committing certain sex offenses after October 1, 2002, from living within 1000 feet of a school, day care center, park, or playground if their victim was under 16 years old. Violation of the prohibition would constitute a new crime, with the level depending upon the classification of the qualifying offense.

The CS also provides that a state funded facility or program that provides housing for a person who is in violation of s. 947.1405(7)(a)2., F.S., or s. 794.065, F.S., shall lose its state funding for the remainder of the fiscal year.

The CS provides an effective date of July 1, 2002.

This CS substantially amends s. 947.1405 and creates s. 794.065 of the Florida Statutes.

## II. Present Situation:

### Conditional Release Supervision

With the abolition of parole in 1983, an ever growing number of offenders were being released from prison without post-release supervision. To remedy the public safety concerns associated with this new development, the Legislature mandated that certain offenders be supervised upon

their release from prison by adopting the Conditional Release Program Act of 1988. Section 947.1405, F.S., was created which requires an inmate convicted of repeated violent crimes who is nearing the end of his or her sentence to be released under close supervision. The length of the supervision ends upon completion of 100 percent of their court imposed sentence. On average, this represents about 3 years of post-release supervision. If the releasee successfully completes the conditional release program, the inmate is no longer supervised by the court or the Department of Corrections. If the releasee violates the conditions of his or her conditional release, the releasee may be returned to prison and his or her gain time is forfeited. The Florida Supreme Court recently explained the purposes of the conditional release program:

The Legislature has determined that habitual offenders and offenders who have committed certain types of violent offenses after having served a prior commitment to prison should receive supervision after release. This supervision should help these former inmates in bridging the gap between prison and the outside world. To encourage releasees to comply with the terms and conditions of supervision, the program provides that if the releasee fails to do so, the releasee will be returned to prison and his gain time will be forfeited.

*Duncan v. Moore*, 754 So. 2d 708, 710 (Fla. 2000).

As of October 31, 2001, there were 2,937 offenders on conditional release supervision and of those, 291 were sex offenders who may be impacted by this legislation.

The conditional release program, in practice, operates as follows. When an inmate is sentenced to a prison term, the inmate is given a "maximum sentence expiration date," which is the date that the inmate's sentence will expire. Each inmate is given a "tentative release date," the date that the inmate will be released from prison when all of the inmate's gain time is deducted from his or her sentence. When an inmate meets the eligibility criteria in law and is within 180 days of his or her release date, the inmate's records are compiled and reviewed by the Department of Corrections (department) and the department recommends to the Parole Commission the terms and conditions of the conditional release. After reviewing the recommendations of the department, the Parole Commission establishes the terms and conditions of the inmate's conditional release and may determine the length of the inmate's supervision. The period of conditional release supervision cannot exceed the maximum penalty imposed by the court.

### **Statutorily Mandated Conditions of Release**

If an inmate is convicted of certain sex crimes or sexual battery crimes, the statute **requires** that the inmate who is released on conditional release must remain on conditional release for the remainder of the sentence imposed by the court. In addition to any other terms and conditions imposed by the commission, s. 947.1405(7)(a), F.S., **requires** the commission to impose certain conditions including:

1. a 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. active participation in a sex offender treatment program;
4. a prohibition on contact with the victim, except under specified circumstances;
5. if the victim was under the age of 18, a prohibition on unsupervised contact with children until certain conditions are met;
6. if the victim was under the age of 18, a prohibition on working at any school, day care center, park, playground, or other place where children congregate, as prescribed by the commission;
7. a prohibition on the viewing or possession of pornographic or sexually stimulating materials;
8. a requirement that the releasee submit a DNA sample to the Florida Department of Law Enforcement;
9. a requirement that the releasee make restitution to the victim; and
10. submission to warrantless searches by the releasee's probation officer of the releasee's person, residence, or vehicle.

The current statute does not specifically prohibit a releasee from living within 1000 feet of a school bus stop. However, it can be argued that a school bus stop is covered by the prohibition against living within 1000 feet of an "other place where children regularly congregate."

If a person on conditional release violates the conditions of his or her release, the releasee can be returned to prison and have his gain time forfeited. When a violation is alleged, the releasee is entitled to a hearing before the Parole Commission or its hearing officer. After a hearing, the commission can revoke conditional release, impose new conditions on the release, or allow conditional release to continue.

### **III. Effect of Proposed Changes:**

Section 1 of the CS amends the conditional release statute to specifically state that certain sex offenders who are under conditional release and whose victims were under 18 years of age cannot live within 1,000 feet of a school bus stop. It also provides that state funded facilities or programs will lose funding for the fiscal year if they provide housing for a person who is in violation of the prohibition. An offender who violates the prohibition could result in revocation of conditional release status.

Section 2 of the CS creates s. 794.065, F.S., which will prohibit persons convicted of certain sex offenses against a victim under 16 years of age from living within 1000 feet of a school, day care center, park, or playground. The qualifying offenses are: sexual battery (s. 794.011, F.S.); unlawful sexual activity with minors (s. 794.05, F.S.); lewd or lascivious offense on or in presence of a person less than 16 years old (s. 800.04, F.S.); sexual performance by a child (s. 827.071, F.S.); and selling or buying of minors (s. 847.0145, F.S.). The new statute will only apply to offenses committed after October 1, 2002.

Violation of the prohibition created by Section 2 would constitute a new crime. If the original conviction was classified as a first degree felony or higher, the violation of s. 794.065, F.S.,

would be classified as a third degree felony; if the original conviction was classified as a second or third degree felony, the violation of s. 794.065, F.S., would be classified as a first degree misdemeanor.

A state funded facility or program that provides housing for a person who is in violation of the new section's prohibition will lose its state funding for the remainder of the fiscal year.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 9, U.S. Const., and article I, s. 10, Fla. Const., prohibit ex post facto laws. In evaluating whether a law violates the ex post facto clause, courts apply a two-prong test: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable. See *Gwong v. Singletary*, 683 So. 2d 109, 112 (Fla. 1996); *California Dep't of Corrections v. Morales*, 514 U.S. 499 (1995).

It can be argued that a prohibition on where someone can live constitutes punishment under the ex post facto clause of either the state or federal constitutions. No court has directly addressed the issue. If a court were to hold that a restriction on where a person can live was punishment, and that a school bus stop was not already included in the general category of places where children regularly congregate, retrospective application of this condition could violate the ex post facto clauses.

Courts have held that provisions requiring the registration of certain sexual offenders is not punishment under the ex post facto clause. See e.g. *Simmons v. State*, 753 So. 2d 762 (Fla. 4th DCA 2000). Instead, the court held that the registration requirements are merely regulatory. See *Simmons*, 753 So. 2d at 763. If a court were to hold that restrictions on living location were regulatory, or that a school bus stop is already included in the general category of places where children regularly congregate, it would find no ex post facto violation.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

State-funded facilities or programs will lose state funding for the fiscal year if they house convicted offenders in violation of the prohibitions.

**C. Government Sector Impact:**

By placing restrictions on where certain offenders on conditional release supervision and certain convicted felons can live, there may be additional violations, revocations and convictions that result in an unspecified number of offenders returning to prison. The cost of these potential increases in prison admissions, if it occurs, will most likely be minimal. The Criminal Justice Estimating Conference has been consulted to estimate a potential bed space impact.

**VI. Technical Deficiencies:**

Although Section 2 of the CS includes s. 794.05, F.S., as a prior offense that triggers application of the restriction on residence, by definition the victims of a violation of s. 794.05, F.S., would be either 16 or 17 years old. Therefore, the residence restrictions would never apply to a violation of s. 794.05, F.S., because the victim could not be under 16 years of age.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.