

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 37 w/CS Sexual Offenders
SPONSOR(S): Kravitz
TIED BILLS: **IDEN./SIM. BILLS:** SB 1806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>		<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>		<u>Kramer</u>	<u>De La Paz</u>
3) <u>Pre-K through 12 (Sub)</u>		<u>Carlson</u>	<u>Bohannon</u>
4) <u>Education K-20</u>			
5) <u>Public Safety Appropriations (Sub)</u>			
6) <u>Appropriations</u>			

SUMMARY ANALYSIS

Under current law, certain sex offenders under conditional release supervision cannot reside within 1,000 feet of a “school, day care center, park, playground, or other place where children regularly congregate.” HB 37, with committee substitute (“committee substitute”), 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 committee substitute 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 committee substitute 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 offenses that occur after October 1, 2003.

The effective date of the bill is October 1, 2003.

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 who is nearing the end of his or her sentence to be released under close supervision. 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. The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections. The length of supervision cannot exceed the maximum penalty imposed by the court. s. 947.1405(6). The Department of Corrections supervises the offender while on conditional release.

For inmates convicted of certain sexual offenses (sexual battery, lewd or lascivious offenses, sexual performance by a child and selling or buying of minors), or offenses against children 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.

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. s. 947.141, F.S. After a hearing, the Commission may revoke the conditional release and return the releasee to prison, impose new conditions on the release, or allow conditional release to continue.

Information provided by the Department of Corrections revealed that, as of 11/30/02, there were 3,248 conditional releasees under active supervision of the Department of Corrections. Of these, 263 were sex offenders and 21 had a minor victim that fit the criteria for application of the proposed new condition of supervision. In Fiscal Year 2001-2002, 337 conditional release sex offenders were released to supervision and 30 had a minor victim that fit the criteria for application of the proposed new condition of supervision.

HB 37, with committee substitute, 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 committee substitute 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 committee substitute 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 committee substitute 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

HB 37, with committee substitute, also creates a new section which makes it unlawful for a person who is convicted of an enumerated sexual offense (violations of ss. 794.011, 794.05, 800.04, 827.071 and 847.0145) committed after October 1, 2003 against a victim under 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
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 Criminal Justice Impact Conference has not met to consider any impact of the bill on the prison population of the Department of Corrections. A bill analysis by the Department of Corrections included the following:

The fiscal impact is indeterminate at this time. However, cost estimates will have to consider providing the Department of Corrections and the Department of Education with the necessary resources and state of the art technology utilizing geo-mapping to pinpoint all restricted areas using the information provided by the district school boards and comparing to the Department's database of sex offender residences. Unless the existing technology is significantly upgraded, this will involve the data entry of over 150,000 school bus stops into a constantly changing database.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
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 after October 1, 2003 where the victim is under the age of 16 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
2. Other

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 37 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.

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.

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Corrections recommended an amendment sponsored by Rep. Kravitz to clarify the responsibilities of the parties affected by this bill. According to the amendment, 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 within 1,000 feet of the existing residence of a releasee. The amendment 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 amendment was adopted by the Committee on Public Safety & Crime Prevention on February 20, 2003. -