



**PUBLIC SAFETY
&
DOMESTIC SECURITY POLICY
COMMITTEE**

**TUESDAY, FEBRUARY 2, 2010
8:00 A.M. – 9:45 A.M.
404 HOB**

MEETING PACKET

Larry Cretul
Speaker

REVISED

Kevin C. Ambler
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Public Safety & Domestic Security Policy Committee

Start Date and Time: Tuesday, February 02, 2010 08:00 am

End Date and Time: Tuesday, February 02, 2010 09:45 am

Location: 404 HOB

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 319 Medical Expenses of Inmates Paid by a County or Municipality by Hooper

HB 525 Statutes of Limitation for Sexual Battery by Dorworth

HB 595 Open House Parties by Fitzgerald

HB 615 Substantial Assistance by Brandenburg

HB 621 Possession of Stolen Credit Cards by Brandenburg

Workshop on the following:

HB 119 Sexual Offenders and Predators by Glorioso

NOTICE FINALIZED on 01/26/2010 16:14 by Jones.Missy



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Committee on Public Safety & Domestic Security Policy

Larry Cretul
Speaker

Kevin C. Ambler
Chair

AGENDA

Tuesday, February 2, 2010

8:00 AM – 9:45 AM

(404 HOB)

- I. Opening remarks by Chair Ambler**
- II. Roll call by CAA**
- III. Consideration of the following bill(s)**
 - HB 319 Medical Expenses of Inmates Paid by a County or Municipality by Hooper**
 - HB 525 Statutes of Limitation for Sexual Battery by Dorworth**
 - HB 595 Open House Parties by Fitzgerald**
 - HB 615 Substantial Assistance by Brandenburg**
 - HB 621 Possession of Stolen Credit Cards by Brandenburg**
- IV. Workshop on HB 119**
- V. Closing Remarks**
- VI. Meeting Adjourned**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 319 Medical Expenses of Inmates Paid by a County or Municipality
SPONSOR(S): Hooper and others
TIED BILLS: IDEN./SIM. BILLS: SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Krol <i>TK</i>	Cunningham <i>PC</i>
2) Military & Local Affairs Policy Committee			
3) Health Care Regulation Policy Committee			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

This bill would allow a county or municipality to pay medical costs of a person who has been arrested at Medicaid rates if no formal written agreement exists between the county or municipality and the healthcare provider.

Medical costs include medical care, treatment, hospitalization, and transportation.

This bill is estimated to have a positive fiscal impact on local governments.

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:

Background

Pre-trial detainees have a constitutional right to reasonable and adequate nourishment and medical care,¹ but the cost of the medical care is the primary responsibility of the person receiving the medical care.² A medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation for a person ill, wounded, or otherwise injured during or at the time of arrest for any violation of state law or a county or municipal ordinance from first, insurance; second, from the person receiving medical care; and finally from a financial settlement for the medical costs.³

When reimbursement from these sources is unavailable, the cost of medical care shall be paid from the general fund of the county in which the person was arrested. If the arrest was for violation of a municipal ordinance then the municipality shall pay the medical service provider.⁴ Section 951.032, F.S., articulates the local government's rights for reimbursement from the person seeking medical attention.⁵

The injury or illness need not be caused by the arrest.⁶ The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency. The rates medical service providers can charge local governments are not capped.⁷ At least one Florida appellate court has held that the costs of medical services are not among the costs covered by the constitutional

¹ *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997).

² Section 901.35, F.S.

³ *Id.*

⁴ *Id.*

⁵ See *Williams v. Ergle*, 698 So.2d 1294, (5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).

⁶ See *North Brevard County Hospital District v. Brevard County Bd. of County Commissioners*, 899 So.2d 1200, 1202-03 (Fla. 5th DCA 2005) ("One cannot fault Brevard County or the trial court in its attempt to circumvent section 901.35. The implications of the statute can be financially devastating to a local government in view of the ever increasing cost of medical care, especially when the Legislature has not placed a cap on the liability of government.") (citing Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004)); Op. Atty. Gen. 85-6, Feb. 4, 1985).

⁷ Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).

provision that prohibits compelling persons charged with a crime to pay costs before a judgment of conviction has become final.⁸

Medicaid Rates

Pursuant to s. 409.908, F.S., reimbursement for Medicaid providers varies by type of provider. Medicaid provider rates are set forth in the Florida Agency for Health Care Administration's rules, policy manuals, and Medicaid provider handbooks.⁹ Medicaid provider payment methodology includes: fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding, and other methods the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Medicaid reimbursement is subject to any limitations or directions provided for the General Appropriations Act (GAA).

Proposed Changes

This bill would allow a county or municipality to pay medical costs of a person who has been arrested at Medicaid rates if no formal written agreement exists between the county or municipality and the healthcare provider.

Medical costs include medical care, treatment, hospitalization, and transportation.

B. SECTION DIRECTORY:

Section 1. Amends s. 901.35, F.S., relating to financial responsibility for medical expenses.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill would act as a cost savings measure for counties and municipalities by capping the cost of medical services provided to persons ill, wounded, or otherwise injured during or at the time of arrest at the state's Medicaid rate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrested parties when the person receiving the services cannot

⁸ *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997) (citing Art. I, s. 19, Fla. Const).

⁹ See AGENCY FOR HEALTH CARE ADMINISTRATION, FEE SCHEDULES,

http://portal.flmmis.com/FLPublic/Provider_ProviderSupport/Provider_ProviderSupport_FeeSchedules/tabId/44/Default.aspx;

http://ahca.myflorida.com/Medicaid/cost_reim/index.shtml.

provide for payment of the costs and when the provider does not have a formal written agreement with the county or municipality in which the person was arrested.

D. FISCAL COMMENTS:

See above.

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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to medical expenses of inmates paid by a
 3 county or municipality; amending s. 901.35, F.S.;
 4 requiring that payments made by a county or municipality
 5 to a provider for certain services for an arrested person
 6 be made at the state's Medicaid rate; providing an
 7 effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Subsection (2) of section 901.35, Florida
 12 Statutes, is amended to read:

13 901.35 Financial responsibility for medical expenses.--

14 (2) Upon a showing that reimbursement from the sources
 15 listed in subsection (1) is not available, the costs of medical
 16 care, treatment, hospitalization, and transportation shall be
 17 paid:

18 (a) From the general fund of the county in which the
 19 person was arrested, if the arrest was for violation of a state
 20 law or county ordinance; or

21 (b) From the municipal general fund, if the arrest was for
 22 violation of a municipal ordinance.

23

24 The responsibility of a county or municipality to pay ~~for~~
 25 ~~payment of~~ such medical costs shall exist only until such time
 26 as an arrested person is released from the custody of the
 27 arresting agency. Absent a formal written agreement between a
 28 county or municipality and a provider, any payments made by the

HB 319

2010

29 | county or municipality under this section to the provider for
30 | medical care, treatment, hospitalization, and transportation of
31 | an arrested person shall be made at the state's Medicaid rate
32 | for such services.

33 | Section 2. This act shall take effect July 1, 2010.

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:

Present Situation

Criminal Prosecution

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations."

Section 775.15(3), F.S., provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.¹

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.² The legislature can extend the limitations period without violating the constitutional prohibition against ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective.³ If the pre-existing statute of limitations had already expired prior to passage of the new statute of limitations, the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the United States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10).⁴

Section 794.011, F.S., prohibits sexual battery. "Sexual battery" is defined to mean oral, anal, or vaginal penetration or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide

¹ Section 775.15, F.S.

² See *Andrews v. State*, 392 So.2d 270,271 (Fla. 2d DCA 1980).

³ *Id.*

⁴ See *United States v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State*, 352 So.2d 853 (Fla. 1977).

medical purpose.⁵ The felony degree for the offense of sexual battery varies depending on the age of the defendant and the age of the victim. There is no time limit for commencing a criminal prosecution for the life felonies in Chapter 794, F.S. A criminal prosecution for a first degree felony in Chapter 794, F.S. must commence within four years. A criminal prosecution for the second and third degree felonies in Chapter 794, F.S., must commence within three years.

Under current law, there is no statute of limitations for most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable statute of limitations under current law. As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.⁶ Those two offenses are as follows:

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.⁷ There is no statute of limitations for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime⁸ or if there were multiple perpetrators.⁹ Otherwise, the statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.
- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree.¹⁰ The statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.

In addition to the time periods stated above, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹¹

Civil Action

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 20 years to 30 days.

Section 95.031, F.S., provides that time for commencing civil actions starts to run from the time the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.¹² Time limitations may be tolled under certain circumstances.¹³

A civil claim for a violation of Chapter 794 must commence within four years from the date when the cause of action accrues.¹⁴

⁵ Section 794.011(1)(h), F.S.

⁶ Section 775.15(13)(a), F.S.

⁷ Section 794.011(5), F.S.

⁸ Section 775.15(14), F.S.

⁹ If there were multiple perpetrators, this crime is reclassified as a first degree felony, s. 794.023(2)(a), F.S., and accordingly there would be no statute of limitations.

¹⁰ Section 794.011(8)(a), F.S.

¹¹ Section 775.15(8), F.S.

¹² Section 95.031(1), F.S.

¹³ Section 95.051, F.S.

¹⁴ Section 95.11(3)(o), F.S.

Proposed Changes

Criminal Prosecution

The bill amends s. 775.15, F.S. to provide there is no time limitation for the criminal prosecution of a violation of s. 794.011, F.S. when the victim was under the age of 16 at the time of the offense. The bill applies to all offenses except those offense barred by prosecution on or before July 1, 2010.

Civil Action

The bill amends s. 95.11, F.S. to provide that there is no time limitation for a civil cause of action of a violation of s. 794.011, F.S. when the victim was under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S. relating to limitations other than for the recovery of real property.

Section 2: Amends s. 775.15, F.S. relating to time limitations; general time limitations; exceptions.

Section 3: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to statutes of limitation for sexual
 3 battery; amending ss. 95.11 and 775.15, F.S.; eliminating
 4 statutes of limitations to the institution of criminal or
 5 civil actions relating to sexual battery of a child if the
 6 victim is under 16 years of age at the time of the
 7 offense; providing applicability; providing an effective
 8 date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (9) is added to section 95.11,
 13 Florida Statutes, to read:

14 95.11 Limitations other than for the recovery of real
 15 property.—Actions other than for recovery of real property shall
 16 be commenced as follows:

17 (9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An
 18 action related to an act constituting a violation of s. 794.011
 19 involving a victim who was under the age of 16 at the time of
 20 the act may be commenced at any time. This subsection applies to
 21 any such action other than one which would have been time barred
 22 on or before July 1, 2010.

23 Section 2. Paragraph (c) is added to subsection (13) of
 24 section 775.15, Florida Statutes, to read:

25 775.15 Time limitations; general time limitations;
 26 exceptions.—

27 (13)

HB 525

2010

28 (c) If the offense is a violation of s. 794.011 and the
 29 victim was under 16 years of age at the time the offense was
 30 committed, a prosecution of the offense may be commenced at any
 31 time. This paragraph applies to any such offense except an
 32 offense the prosecution of which would have been barred by
 33 subsection (2) on or before July 1, 2010.

34 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595
SPONSOR(S): Fitzgerald
TIED BILLS:

Open House Parties

IDEN./SIM. BILLS: SB 1066

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

SUMMARY ANALYSIS

Section 856.015, F.S., states that a person in control of an open house party commits a second degree misdemeanor if they know a minor has possession of or consumed any alcoholic beverage or drug at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

This bill amends present law to make a second or subsequent violation of s. 856.015(2), F.S., a first degree misdemeanor.

This bill also provides that any violation of s. 856.015(2), F.S., which results in serious bodily injury or death, will be punishable by a first degree misdemeanor.

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:

Background

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.¹

Section 856.015, F.S., states that a person² in control of an open house party³ commits a second degree misdemeanor⁴ if they know a minor⁵ has possession of or consumed any alcoholic beverage⁶ or drug⁷ at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

This statute exempts the use of alcoholic beverages at legally protected religious observances or activities.⁸

Proposed Changes

This bill amends present law to make a second or subsequent violation of s. 856.015(2), F.S., a first degree misdemeanor, which is punishable by a fine not to exceed \$1000 and/or up to 1 year in jail.⁹

This bill also provides that any violation of s. 856.015(2), F.S., which results in serious bodily injury, as defined in s. 316.1933,¹⁰ or death, will be punishable by a first degree misdemeanor.

¹ Section 562.111, F.S.

² Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

³ Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

⁴ Sections 775.082 and 775.083, F.S., state that a second degree misdemeanor is punishable by potential incarceration up to 60 days in jail and/or a fine not exceeding \$500.

⁵ Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

⁶ Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

⁷ Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

⁸ Section 856.015(3), F.S.

⁹ Sections 775.082 and 775.083, F.S., respectively.

¹⁰ Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015(2). The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of 856.015(2), F.S., results in seriously bodily injury or death.

This bill could have an impact on local jails.

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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to open house parties; amending s.
 3 856.015, F.S.; providing that a person who violates the
 4 open house party statute a second or subsequent time
 5 commits a misdemeanor of the first degree; providing that
 6 a person commits a misdemeanor of the first degree if the
 7 violation of the open house party statute results in
 8 serious bodily injury or death; providing criminal
 9 penalties; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsections (2) and (4) of section 856.015,
 14 Florida Statutes, are amended, and subsection (5) is added to
 15 that section, to read:

16 856.015 Open house parties.—

17 (2) A ~~No~~ person having control of any residence may not
 18 ~~shall~~ allow an open house party to take place at the said
 19 residence if any alcoholic beverage or drug is possessed or
 20 consumed at the said residence by any minor where the person
 21 knows that an alcoholic beverage or drug is in the possession of
 22 or being consumed by a minor at the said residence and where the
 23 person fails to take reasonable steps to prevent the possession
 24 or consumption of the alcoholic beverage or drug.

25 (4) Any person who violates any of the provisions of
 26 subsection (2) commits a misdemeanor of the second degree,
 27 punishable as provided in s. 775.082 or s. 775.083. A person who
 28 violates subsection (2) a second or subsequent time commits a

HB 595

2010

29 | misdemeanor of the first degree, punishable as provided in s.
30 | 775.082 or s. 775.083.

31 | (5) If a violation of subsection (2) results in serious
32 | bodily injury, as defined in s. 316.1933, or death, it is a
33 | misdemeanor of the first degree, punishable as provided in s.
34 | 775.082 or s. 775.083.

35 | Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 615 Substantial Assistance

SPONSOR(S): Brandenburg

TIED BILLS: IDEN./SIM. BILLS: SB 874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Padgett <i>[Signature]</i>	Cunningham <i>[Signature]</i>
2) Criminal & Civil Justice Appropriations Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Section 893.135(4), F.S. provides the state attorney may make a motion for the sentencing court to reduce or suspend the sentence of a person convicted of drug trafficking and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking a controlled substance.

The bill creates s. 921.186, F.S. to provide that the state attorney may move the sentencing court at any time to reduce or suspend the sentence of a defendant convicted of a felony charge if the defendant provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity. The bill provides the motion may be held in camera.

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:

Present Situation

State

Section 893.135(4), F.S. provides the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S.¹ and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera². The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

Federal

Rule 35 of the Federal Rules of Criminal Procedure provides the court authority to reduce the sentence of a defendant if the government makes a motion within one year of sentencing, if defendant provides substantial assistance in investigating or prosecuting another person. Rule 35 provides that the government may make a motion to reduce sentence more than one year after sentencing if the defendant's substantial assistance involves:

- Information not known to the defendant until one year or more after sentencing;
- Information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until one year after sentencing;
- Information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

Rule 35 provides that the court may consider substantial assistance rendered by the defendant before and after sentencing. Rule 35 provides the court authority to reduce the defendant's sentence to a level below federal statutory guidelines.

Proposed Changes

The bill creates s. 921.186, F.S. to provide that the state attorney may move the sentencing court at any time to reduce or suspend the sentence of a defendant convicted of a felony charge if the

¹ Section 893.135, F.S. relates to drug trafficking.

² "In camera" means the motion may be heard in the privacy of the judge's chambers.

defendant provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity. The bill provides the motion may be held in camera.

B. SECTION DIRECTORY:

Section 1: Creates s. 921.186, F.S., relating to substantial assistance.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 893.135, F.S., which contains language similar to the bill, provides the arresting agency may be heard in aggravation or mitigation in reference to any motion to reduce or suspend a defendant's sentence. This provision is not included in the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to substantial assistance; creating s.
 3 921.186, F.S.; permitting the state attorney to request
 4 the sentencing court to reduce or suspend the sentence of
 5 a defendant who has been convicted of violating any felony
 6 offense and who provides substantial assistance in the
 7 identification, arrest, or conviction of any accomplice,
 8 accessory, coconspirator, or principal of the defendant or
 9 other felon; providing that the motion may be filed and
 10 heard in camera for good cause shown; providing that a
 11 judge may reduce or suspend the sentence if the judge
 12 finds that the defendant rendered substantial assistance;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 921.186, Florida Statutes, is created
 18 to read:

19 921.186 Substantial assistance.—Notwithstanding any other
 20 law, the state attorney may move the sentencing court at any
 21 time to reduce or suspend the sentence of any defendant who is
 22 convicted of violating any felony offense and who provides
 23 substantial assistance in the identification, arrest, or
 24 conviction of any accomplice, accessory, coconspirator, or
 25 principal of the defendant or of any other person engaged in
 26 criminal activity that would constitute a felony. Upon good
 27 cause shown, the motion may be filed and heard in camera. The
 28 judge hearing the motion may reduce or suspend the sentence if

HB 615

2010

29 | the judge finds that the defendant rendered such substantial
30 | assistance.

31 | Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 Possession of Stolen Credit Cards
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Currently, mere possession of a stolen credit card is not, per se, illegal. Section 817.60, F.S. contains several offenses relating to the unauthorized possession of a credit card, however all current offenses under this section require either proof of intent to use, sell, or transfer a stolen credit card; or require a fraudulent intent in obtaining the credit card.

The bill amends s. 817.60(1), F.S. to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or a person possesses, receives, or retains custody of a credit card without the cardholder's consent. These changes remove the element of intent required in current s. 817.60(1), F.S.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.

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:

Present Situation

Section 817.60, F.S. provides criminal penalties punishable as a first degree misdemeanor¹ for several offenses relating to credit cards² including:

- Taking³ a credit card from the person, possession, custody, or control of another without the cardholder's consent, or with knowledge the card has been so taken, receiving the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder;
- Receiving a credit card that is known to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retaining the card with the intent to use, sell, or transfer the card to another person other than the issuer or the cardholder;
- Selling or buying a credit card from a person other than the issuer;
- Obtaining a credit card as security for debt with intent to defraud; or
- Signing the credit card of another.⁴

Section 817.60, F.S. provides criminal penalties punishable as a third degree felony⁵ for several offenses relating to credit cards including:

- Receiving two or more credit cards within a 12 month period issued in the names of different cardholders, which the person had reason to know were taken or retained under circumstances that constitute credit card theft;
- Possessing two or more counterfeit credit cards;
- Making a device or instrument that purports to be a credit card of a named issuer but which the issuer did not authorize; or
- Falsely embossing a credit card without authorization of the issuer.⁶

¹ A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082, 775.083, F.S.

² "Credit card" is defined to mean any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device." Section 817.58(4), F.S.

³ Taking a credit card without consent includes obtaining the card by statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, or embezzlement or obtaining property through false pretense, false promise, or extortion. Section 817.60(1), F.S.

⁴ Section 817.60(1)-(4), F.S.

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

It is possible that possession of a stolen credit card could be prosecuted as theft under s. 812.014, F.S. Section 812.014(1), F.S. provides a person commits theft if the person knowingly obtains the property of another with the intent to, either temporarily or permanently:

- deprive the other person of a right to the property or benefit from the property; or
- appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.⁷

The penalties for a violation of s. 812.014, F.S. are generally tied to value of the stolen goods.⁸ The actual value of a credit card would likely be determined to be the value of the plastic used to make the credit card, which would be a negligible amount. The value of the stolen goods would likely be under \$300 and prosecuted as a second degree misdemeanor^{9, 10}

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property.¹¹ Section 812.019(1), F.S. provides that a person commits a second degree felony¹² if the person traffics¹³ in or endeavors to traffic in property that he or she knew or should have known was stolen.

Section 812.022, F.S. provides evidence of theft or dealing in stolen property which may be used to create an inference that a person knew, or should have known that the property was stolen.¹⁴ Examples include: possession of recently stolen property, unless satisfactorily explained; the purchase or sale of stolen property at a price substantially below fair market value, unless satisfactorily explained; and the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership, unless satisfactorily explained.¹⁵

Proposed Changes

The bill amends s. 817.60(1), F.S. to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or a person possesses, receives, or retains custody of a credit card without the cardholder's consent. These changes remove the element of intent required in current s. 817.60(1), F.S.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.60, F.S., relating to theft; obtaining credit card through fraudulent means.

⁶ Section 817.60(5), s. 817.60(6), F.S.

⁷ Section 812.014(1), F.S.

⁸ Section 812.014, F.S. If the value of the stolen property is \$100,000 or greater, the offense is punishable as a first degree felony; if the value of the stolen property is between \$20,000 and \$100,000, the offense is a second degree felony; if the value of the stolen property is between \$300 and \$5,000, the offense is a third degree felony; if the value of the stolen goods is valued at between \$100 and \$300, the offense is a first degree misdemeanor; if the value of the stolen goods is valued at less than \$100, the offense is a second degree misdemeanor. Some property is listed specifically in s. 812.014, F.S. Theft of this specified property may be punished at a greater degree of punishment regardless of the value of the stolen items.

⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Sections 775.082, 775.083, F.S.

¹⁰ Section 812.014(3)(a), F.S.

¹¹ Section 812.019(1), F.S.

¹² A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

¹³ "Traffic" is defined to mean to sell, transfer, distribute, dispense, or otherwise dispose of property, or to buy, receive possess, obtain control of, or use property with intent to sell, transfer, distribute, dispense, or otherwise dispose of such property. Section 812.012(8), F.S.

¹⁴ Section 812.022, F.S.

¹⁵ Id.

Section 2: Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Removing the element of intent from the offense could possibly criminalize innocent conduct. For example, if a person finds a credit card on the ground that had been taken from someone else without consent, picking up the credit card could possibly subject the person to criminal charges under the bill, even if the person's intent was to return the card to the owner.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HB 621

2010

1 A bill to be entitled
 2 An act relating to possession of stolen credit cards;
 3 amending s. 817.60, F.S.; prohibiting possession,
 4 reception, or retention of custody or control of a credit
 5 card taken from the person, possession, custody, or
 6 control of another without the cardholder's consent;
 7 deleting language requiring knowledge that a credit card
 8 was taken without the cardholder's consent and received
 9 with specified intent in order to commit certain offenses;
 10 providing criminal penalties; increasing the penalty for
 11 specified offenses; providing for an inference that the
 12 person in possession of a credit card knew or should have
 13 known that the credit card had been stolen in certain
 14 circumstances; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (1) of section 817.60, Florida
 19 Statutes, is amended to read:

20 817.60 Theft; obtaining credit card through fraudulent
 21 means.—

22 (1) THEFT BY TAKING OR RETAINING POSSESSION OF CARD
 23 TAKEN.—A person who takes a credit card from the person,
 24 possession, custody, or control of another without the
 25 cardholder's consent or a person who possesses, receives, or
 26 retains custody or control of such a card commits ~~who, with~~
 27 ~~knowledge that it has been so taken, receives the credit card~~
 28 ~~with intent to use it, to sell it, or to transfer it to a person~~

HB 621

2010

29 ~~other than the issuer or the cardholder is guilty of~~ credit card
 30 theft and is subject to the penalties set forth in s.
 31 817.67 (2) ~~(1)~~. Taking a credit card without consent includes
 32 obtaining it by conduct defined or known as statutory larceny,
 33 common-law larceny by trespassory taking, common-law larceny by
 34 trick or embezzlement, or obtaining property by false pretense,
 35 false promise, or extortion. Proof of possession of a credit
 36 card that has been recently stolen or possession of a credit
 37 card in the name of a person other than that of the possessor,
 38 unless satisfactorily explained, gives rise to an inference that
 39 the person in possession of the credit card knew or should have
 40 known that the credit card had been stolen.

41 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 119
SPONSOR(S): Glorioso
TIED BILLS:

Sexual Offenders and Predators

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Domestic Security Policy Committee</u>	_____	Kramer <i>TK</i>	Cunningham <i>SKL</i>
2) <u>Military & Local Affairs Policy Committee</u>	_____	_____	_____
3) <u>Criminal & Civil Justice Appropriations Committee</u>	_____	_____	_____
4) <u>Criminal & Civil Justice Policy Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates restrictions for a person convicted of an offense listed in the sexual offender statute where the victim was under the age of 18 as follows:

- The bill makes it a first degree misdemeanor if a person convicted of such an offense commits loitering or prowling within 300 feet of a place where children regularly congregate, including but not limited to, a school, day care center, park or playground.
- The bill makes it a first degree misdemeanor for a person convicted of such an offense to knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature. This will only apply to an offender who committed the sexual offense on or after July 1, 2010.
- The bill also makes it a first degree misdemeanor for a person convicted of such an offense to:
 - Knowingly be present in any child care facility or pre-K through 12 school or on real property comprising any child care facility or pre-K through 12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;
 - Fail to notify the child care facility owner or the principal's office when he or she arrives and departs the child care facility or school; or
 - Fail to remain under the direct supervision of a school official or designated chaperone when present in the vicinity of children.

The bill creates 775.215, F.S. which provides that the adoption of residency distance limitations for persons convicted of a sexual offense is expressly preempted to the state and the provisions of state law establishing such distance limitations supersede the distance limitations in any such municipal or county ordinances.

The bill further provides that any provision of an ordinance adopted by a county or municipality prior to July 1, 2010, imposing residency exclusions for the residence of a sex offender in excess of the requirements of state law is repealed and abolished as of July 1, 2010. The bill provides an exception for a county or municipality ordinance adopted prior to July 1, 2010 upon the recommendation of the chief law enforcement officer of the county or city and upon a finding of public necessity that increases the distance exclusions for residence of a person subject to the provision of state law up to a maximum distance of 1,750 feet.

The bill will prohibit certain offenders on supervision for a sexual offense from visiting areas where children regularly congregate, including but not limited to, schools, day care centers, parks and playgrounds. The bill will prohibit these offenders on supervision from distributing candy or other items to children on Halloween, wearing a Santa Claus, Easter bunny or clown costume or entertaining at children's parties.

On February 25, 2009, the Criminal Justice Impact Conference determined that a substantially similar bill would have an insignificant prison bed impact on the Department of Corrections.

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:

Sexual Predator/Offender Registration [Sections 2, 4, 6 and 7]: In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory requirements.¹ Failure to comply with these requirements is a third or second degree felony, depending of the offense.

During initial registration, a sexual predator or sexual offender is required to provide certain information, including the address of his or her permanent or temporary residence, to the sheriff's department who, in turn, provides this information to the Florida Department of Law Enforcement for inclusion in the statewide database. For a sexual predator or sexual offender who is not in the custody of or under the supervision of the Department of Corrections or a local jail, this information must be provided within 48 hours of establishing or maintaining a residence.

A sexual predator or sexual offender is required to update information regarding his or her permanent or temporary residence. A sexual predator or sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence must, within 48 hours after vacating the permanent residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence. Currently, the term "temporary residence" is defined as follows:

a place where the person abides, lodges, or resides for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.²

The bill specifies that the definition includes but is not limited to vacation, business or personal travel destinations in or out of the state.

The bill defines the term "transient residence" to mean:

¹ See generally, ss. 775.21, 943.0435 and 944.607, F.S.

² s. 775.21(2)(g), F.S.

A place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter, and a location that has no specific street address.

The bill requires a sexual predator or sexual offender to provide information regarding his or her transient residence.

Loitering or prowling: Certain sexual predators who have committed an offense against a minor victim and certain offenders who are on supervision for a sexual offense are prohibited from working at specified locations.³ Although there are statutory restrictions on where certain people who have been convicted of a sexual offense can reside,⁴ (discussed below) there are no statutory restrictions on where a person who has been convicted of a sexual offense can visit.

The loitering statute, section 856.021, F.S. provides as follows:

(1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

Currently, a violation of this section is a second degree misdemeanor.

The bill provides restrictions for a person convicted of an offense listed in the sexual offender statute⁵ where the victim was under the age of 18 as follows. The bill provides that if a person convicted of such an offense commits loitering or prowling within 300 feet of a place where children regularly congregate, including but not limited to, a school, day care center, park or playground, the offense will be a first degree misdemeanor.

It will be a first degree misdemeanor for a person convicted of such an offense to knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature. This will only apply to an offender who committed a sexual offense on or after July 1, 2010.

It will also be a first degree misdemeanor for a person convicted of such an offense to:

³ See s. 775.21(10)(b); 947.1405(7)(a)6.; 948.30(1)(f), F.S.

⁴ See s. 794.065; 947.1405(7)(a)2; 948.30(1)(b), F.S.

⁵ The offenses referenced include sections 787.01 (kidnapping); s. 787.02 (false imprisonment); s. 787.025 (luring or enticing a child); s. 794.011 (sexual battery); s. 794.05 (unlawful sexual activity with certain minors); s. 796.03 (procuring a person under the age of 18 for prostitution); s. 796.035, (selling or buying of a minor into sex trafficking or prostitution); 800.04 (lewd or lascivious offenses); 825.1025(2)(b) (lewd or lascivious battery on an elderly person); s. 827.071 (promoting sexual performance by a child); s. 847.0133 (selling or showing obscenity to a minor); 847.0135 (traveling to meet a minor for the purpose of engaging in illegal sexual activity); s. 847.0137; (transmitting child pornography); s. 847.0138 (transmitting material harmful to minors); s. 985.701 (sexual misconduct by a Department of Juvenile Justice employee)

1. Knowingly be present in any child care facility or pre-K through 12 school or on real property comprising any child care facility or pre-K through 12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;
2. Fail to notify the child care facility owner or the principal's office when he or she arrives and departs the child care facility or school; or
3. Fail to remain under the direct supervision of a school official⁶ or designated chaperone when present in the vicinity of children.

The bill provides that it is not a violation of the above provision if, the child care facility or school is a voting location and the offender is present for the purpose of voting during the hours designated for voting or if the offender is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

Unlawful place of residence for persons convicted of certain sex offenses: Before October 1, 2004, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.⁷ In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S. was created⁸ which made it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense⁹, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony.

In recent years, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. According to the Department of Corrections, as of October 19, 2009, there were 148 such local ordinances. Generally, the ordinances appear to be modeled after section 794.065, F.S. but extend the distance from 1,000 feet to 2,500 feet or more. Many of the ordinances also prohibit an offender from living within a certain distance of places such as libraries, churches and bus stops that are not included in the state statute.

A great deal of press coverage has documented that many local residency exclusions make it significantly more difficult for a sexual offender to obtain a legal residence. In Miami-Dade County, a varying number of sexual offenders have reported their address as underneath the Julia Tuttle Bridge.¹⁰

On April 14, 2009, the Broward County Board of County Commissioners adopted an ordinance creating residency exclusions for sexual offenders that was to be effective for ninety days. The commission also created the Sexual Offender & Sexual Predator Residence Task Force on which was required "to review, research, and make recommendations to the Board of County Commissioners regarding the issues involved with the residency restrictions of sexual offenders and sexual predators convicted of certain sex offenses"¹¹

6 The bill defines the term "school official" to mean a principal, school resource officer, teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner or a child care provider.

7 In cases in which the victim was a minor, a sexual predator is prohibited from working in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.

8 See 2004-391, Laws of Florida.

9 Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

¹⁰ *Roadside Camp for Miami Sex Offenders Leads to Lawsuit*, New York Times, July 10, 2009; <http://www.nytimes.com/2009/07/10/us/10offender.html>

¹¹ RESOLUTION NO. 2009-309; http://bcegov3.broward.org/NewsRelease/Attachments/2199_114_04-28-

[2009_Sexual%20Offender%20resolution.doc](#)

On August 25, 2009, the final task force report was released. Among the findings found in the task force report were the following:

- Residency restrictions limit housing availability and create an increased number of homeless sex offenders.
- Because 24 cities within the county had adopted residency ordinances, a high percentage of sex offenders were living (sometimes referred to as clustering) in small unincorporated areas.
- A review of the available research on residency restrictions found “no empirical evidence to indicate that these laws achieve their intended goals of preventing abuse, protecting children, or reducing reoffending.”¹²
- No evidence was found indicating that “larger buffer zones are more effective in protecting children than the state’s 1,000-foot restriction.”¹³

Subsequent to the release of the task force report, the Board of County Commissioners removed the repealer language from the previously adopted ordinance. The ordinance prohibits certain sexual offenders in unincorporated parts of the county from living within 2,500 feet of a school, designated public school bus stop, day care center, park or playground.¹⁴

Preemption of local ordinances: [Section 3] The bill creates 775.215, F.S. which provides that the adoption of residency distance limitations for persons convicted of sexual offenses, is expressly preempted to the state and the provisions of sections 794.065, 947.1405 and 948.30, F.S. establishing such distance limitations supersede the distance limitations in any such municipal or county ordinances.

The bill further provides that any provision of an ordinance adopted by a county or municipality prior to July 1, 2010, imposing residency exclusions for the residence of a person subject to the provisions of s. 794.065, 947.1405 or 948.30 in excess of the requirements of those provisions is repealed and abolished as of July 1, 2010. The bill provides an exception for a county or municipality ordinance adopted prior to July 1, 2010 upon the recommendation of the chief law enforcement officer of the county or city and upon a finding of public necessity that increases the distance exclusions for residence of a person subject to the provision of state law up to a maximum distance of 1,750 feet.

In effect, it appears that this section of statute would bar a county or municipality from adopting any residency exclusion ordinance after July 1, 2010 and would only allow ordinances passed prior to that date to be maintained if they applied distance exclusions up to 1,750 feet, were recommended by the county or city’s chief law enforcement officer and based upon a finding of public necessity.

Probation and community control - generally: Probation is a form of community supervision of offenders requiring specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹⁵ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.¹⁶

Conditional release - generally: The conditional release 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.¹⁷ The Parole Commission sets the length and conditions of release after reviewing

¹² *Final Report: Sexual Offender & Sexual Predator Residence Task Force*, Page 6.

http://www.royalcreations.com/fatsa/Final_Report_-_Sexual_Offender_Sexual_Residence_Task_Force.pdf

¹³ Id.

¹⁴ Chapter 21, Article XI, Sec. 21-164 – Sec. 21-170, Broward County Code of Ordinances.

¹⁵ Section 948.001(5), F.S.

¹⁶ Section 948.001(2), F.S.

¹⁷ 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

information provided by the Department of Corrections.¹⁸ The Department of Corrections supervises the offender while on conditional release.

Conditions of probation/community control/conditional release: Currently, an offender who is on probation or community control for a specified sexual offense¹⁹ and therefore supervised by the Department of Corrections must comply with additional terms and conditions of supervision including the following:

1. A prohibition from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate if the victim was under the age of 18.²⁰
2. A prohibition on any contact with the victim unless approved by the victim, the offender's therapist and the sentencing court.²¹
3. If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except in specified circumstances.²²
4. If the victim was under the age of 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks and malls.²³

For inmates convicted of certain sexual offenses²⁴ or offenses against children, who are subject to conditional release, section 947.1405(7)(a), F.S., requires the Parole Commission to impose a list of conditions similar to those above.

Additional conditions required by HB 119 [Sections 8 and 9]: The bill amends s. 948.30, F.S. to expand the list of offenses for which additional conditions of supervision must be imposed to include all offenses listed in the sexual offender statute (rather than just the five offenses listed in footnote 14 above) and provides that in addition to all other conditions imposed, if the offense was committed on or after July 1, 2010, the court must impose the following conditions:

1. A prohibition on visiting areas where children regularly congregate, including but not limited to, schools, day care centers, parks and playgrounds. The bill provides that the court may also designate additional locations to protect the victim. The bill provides that this does not prohibit the probationer or community controllee's attendance at religious services²⁵.
2. A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the Court.

These conditions will apply if the victim was under 18 unless the victim was 16 or 17 and the offender was not more than 21 years of age. Unlike the conditions of probation currently in s. 948.30 relating to residency restrictions which only apply to a person on probation for a specified sexual offense, the new conditions apply to a person "who has been convicted at any time of committing" one of the listed

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

¹⁸ The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

¹⁹ s. 948.30(1)(b), F.S. The specified offenses include sexual battery offenses (chapter 794), lewd or lascivious offenses (s. 800.04, F.S), promoting sexual performance by a child (s. 827.071, F.S.), traveling to meet a minor for the purpose of engaging in illegal sexual activity (874.0135) and selling or buying minors for child pornography (s. 847.0145, F.S.)

²⁰ Section 948.30(1)(b), F.S.

²¹ S. 948.30(1)(d), F.S.

²² s. 948.30(1)(e), F.S.

²³ s. 948.30(1)(f), F.S.

²⁴ 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).

²⁵ The bill refers to the definition of the term "religious service" contained in s. 775.0861, F.S. The term is defined as "a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion."

offenses, regardless of the offense for which they are on supervision. The bill also requires that these conditions be placed on conditional releasees who meet the above criteria.

Polygraph examinations: [Sections 8 and 9] Currently, pursuant to s. 948.30(2)(a), F.S., for a probationer or community controllee who committed a specified sexual offense on or after October 1, 1997, the court must order, as part of a treatment program, that the probationer or community controllee participate at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders where available and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove that a violation of probation occurred.

The bill requires that the polygraph examiner be authorized by the DOC. The bill also provides that the results of the polygraph examination must be provided to the probationer or community controllee's probation officer and therapist. The bill makes similar changes to the s. 947.1405, F.S., the conditional release statute.

Evaluation and treatment of offenders on supervision: [Section 10] Section 948.31, F.S. provides that the court must require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, the court must require outpatient counseling as a term or condition of probation or community control for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child or prostitution.

The bill amends this provision to remove reference to the court requiring a "diagnosis" of the probationer or community controllee and retains the reference to an "evaluation". The bill also removes reference to the court requiring "outpatient" treatment and instead refers to "sex offender treatment".

The bill alters the offenses for which this treatment can be ordered, if needed, to include any offense for which a person can be designated as a sexual predator or subject to registration as a sexual offender.

Current law provides that the treatment can be obtained from a community health center, a recognized social service agency providing mental health services, or a private mental health professional or through other professional counseling. The bill amends this to require that the treatment be obtained from a qualified practitioner as defined in s. 948.001.²⁶ Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing an offense listed in the sexual offender statute. The bill provides that the court must impose restrictions against contact with minors if sex offender treatment is recommended.

Search of registration information: [Section 5] Section 943.04342, F.S. provides that when the court places a defendant on misdemeanor probation, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE. The bill requires that the probation service also must search the probationer's name through the Dru Sjodin National Sex Offender Public maintained by the United States Department of Justice.

B. SECTION DIRECTORY:

Section 1. Creates s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children.

Section 2. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act.

²⁶ The term "qualified practitioner" is defined to mean a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act.

Section 3. Creates s. 775.215, F.S., relating to residency exclusions for sexual offenders or predators; local ordinances preempted.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 943.04352, F.S., relating to search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.

Section 6. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 7. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 8. Amends s. 947.1405, F.S., relating to conditional release program.

Section 9. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 10. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 11. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 12. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 13. Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates a first degree misdemeanor offense for a person who has been convicted of a specified sexual offense to loiter or prowl within 300 feet of certain places. The bill will also make it a first degree misdemeanor for a person who has been convicted of certain sexual offenses to approach, contact or communicate with a minor child in a public park or playground or knowingly be present in a child care facility or a school with specified exceptions. This could have a county jail impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See comments below relating to day care centers.

D. FISCAL COMMENTS:

On February 25, 2009, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides that with specified exceptions, certain offenders cannot be present in a child care facility or school unless they given written notice to the school or day care. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could place an additional workload on schools and day care centers that provide such supervision.

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:

Florida statutes contain restrictions on where certain sex offenders are permitted to reside. Those restrictions only apply to those who committed a qualifying offense after the effective date of the legislation creating the restriction.²⁷ The first section of the bill would prohibit certain people who have previously committed a specified sexual offense from going to a school in certain circumstances. Specifically, the provision requires a person who has committed a prior specified sexual offense to give written notice of his or her intent to be present at a school, to notify the school of their arrival and departure and to remain under the direct supervision of a school official. This provision may be challenged as a violation of the ex post facto clause of the state or federal constitution. Courts may treat this provision as if it were a requirement to "register" in which case it may be analogous to the requirements to register as a sexual offender. Thus far, courts have routinely upheld sexual offender registry requirements. See, e.g., *Smith v. Doe*, 123 S.Ct. 1140 (2003).

Alternatively, this requirement of the bill of the bill might be comparable to statutes which restrict where a sexual offender can live. Because statutes of this type are of recent origin, there is a limited amount of relevant case law nationwide and no relevant Florida appellate court caselaw. In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) *cert denied* 126 S.Ct. 757 (2005), the court considered a challenge to an Iowa statute that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or registered child care facility. The court recognized that the "restricted areas in many cities encompass the majority of the available housing in the city, thus leaving only limited areas within city limits available for sex offenders to establish a residence." *Id.* at 705. The question in an ex post fact challenge is whether the law imposes retroactive punishment for a criminal act after it has been committed. The court applied a test set forth by the United States Supreme Court in *Smith v. Doe*, 123 S.Ct. 1140 (2003) where the Supreme Court upheld a challenge to an Alaska statute requiring sex offenders to register.

²⁷ See ss. 794.065, F.S., 947.1405 and 948.30, F.S.

The 8th Circuit summarized the test to be applied as follows:

Under this test, a court must first consider whether the legislature meant the statute in question to establish 'civil' proceedings. If the legislature intended criminal punishment, then the legislative intent controls the inquiry and the law is necessarily punitive. If, however, the legislature intended its law to be civil and nonpunitive, then we must determine whether the law is nevertheless, so punitive either in purpose or in effect as to negate the State's nonpunitive intent. Only the clearest proof will transform what the legislature has denominated a civil regulatory measure into a criminal penalty.

Miller, 405 F.3d at 718. (citations and internal quotations omitted).

The court also considered the following factors that the Supreme Court described as "useful guideposts" in determining whether a law has a punitive effect:

Whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose.

Id. at 719.

The court considered each of these factors and rejected appellee's claim that the statute violated the ex post facto clause. *See also, Iowa v. Seering*, 701 N.W.2d 655 (Iowa 2005)(Iowa Supreme Court case affirming statute and rejecting ex post facto claim).

On October 1, 2009, applying the same test as that of the *Miller* court, above, the Kentucky Supreme Court held that a state law which restricts where registered sexual offenders may live would be an ex post facto punishment if it were applied to offenders who committed their offense before the effective date of the statute.²⁸ *See also, State v. Pollard*, 908 N.E. 2d 1145 (Ind. 2009)(holding that residency restriction as applied to defendant who committed offense prior to effective date of statute violated ex post facto clause).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1: Section 1 of the bill would prohibit an offender who had been convicted of a specified sexual offense against a victim under the age of 18 from being present in a child care facility or school or on the real property of a school or day care while the school is in operation unless he or she provides written notice to the principal or child care facility owner. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could have broad impact on where these offenders would be able to go without providing written notice and having a chaperone. Depending on how the phrase "while the school is in operation" is interpreted, an offender may be prohibited from going to these places, for example, without providing written notice and having a designated chaperone:

- a church that contains a day care center;
- a school parent-teacher conference;
- a school play or music program;
- a high school football game;
- an adult education program held at a high school in the evening.

²⁸ *Com. v. Baker*, 295 S.W.3d 437 (Ky. 2009)

The provisions of this section of the bill relating to schools apparently apply to any person who has been convicted of one of a list of sexual offenses, regardless of how long ago the offense was committed. By contrast, the sexual offender and sexual predator statutes only apply to offenders who have been released from sanction for their offense after a certain date. For example, the sexual offender statute applies to offenders who have been released from sanction for the qualifying offense on or after October 1, 1997. This section of the bill will limit the behavior of people who are not required to be registered as a sexual predator or sexual offender and have never had such restrictions placed on them.

Section 3: It appears that this section of statute would bar a county or municipality from adopting any residency exclusion ordinance after July 1, 2010 and would only allow ordinances passed prior to that date to be maintained if they did not exceed state law or if they were recommended by the county or city's chief law enforcement officer and upon a finding of public necessity and increased the distance exclusions to a maximum distance of 1,750 feet. Although it is somewhat unclear, this would apparently not permit ordinances to be maintained or created which applied to places not included in state law. State law only applies to schools, day care centers, parks and playgrounds. Of particular importance would be whether a county or municipality ordinance which barred residences in proximity to bus stops could be created or allowed to remain in effect. [State law includes bus stops only for the relatively few offenders who are on conditional release.]

The Broward County Sexual Offender & Sexual Predator Residence Task Force report noted that in that county, there were twenty-four city ordinances which all applied to bus stops and further found that "bus stops appear to be the most restrictive part of residence laws across the state".²⁹ As part of its recommendations, the task force stated, "[i]t is clear that bus stops diminish housing availability within buffer zones to a literal point of non-existence. We recommend that if a residential exclusion zone is passed it should not include bus stops as a prohibited venue."³⁰

It also appears that the newly created section of statute would preclude a county or municipal ordinance from applying to offenders convicted of offenses not included in state law.

Section 9: Lines 1071 and 1082 refer to the "commission". This section of statute relates to conditions of supervision that must be placed on probationers and community controlees and the reference should be to the "court" rather than the "commission".

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

²⁹ *Sexual Offender & Sexual Predator Residence Task Force*, August 25, 2009, p. 25.

³⁰ *Id.* at 35.

29 the supervision of the Department of Corrections but who
 30 are not incarcerated; amending s. 947.1405, F.S.; revising
 31 provisions relating to polygraph examinations of specified
 32 conditional releasees who have committed specified sexual
 33 offenses; providing additional restrictions for certain
 34 conditional releasees who have committed specified sexual
 35 offenses against minors under the age of 16 or have
 36 similar convictions in another jurisdiction; amending s.
 37 948.30, F.S.; revising provisions relating to polygraph
 38 examinations of specified probationers or community
 39 controllees who have committed specified sexual offenses;
 40 providing additional restrictions for certain probationers
 41 or community controllees who committed specified sexual
 42 offenses against minors under the age of 16 or who have
 43 similar convictions in another jurisdiction; amending s.
 44 948.31, F.S.; deleting a requirement for diagnosis of
 45 certain sexual predators and sexual offenders on community
 46 control; revising provisions relating to treatment for
 47 such offenders and predators; amending s. 985.481, F.S.;
 48 providing additional address reporting requirements for
 49 sexual offenders adjudicated delinquent; amending s.
 50 985.4815, F.S.; revising provisions relating to address
 51 and residence reporting requirements for sexual offenders
 52 adjudicated delinquent; providing an effective date.

53
 54
 55
 56

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 856.022, Florida Statutes, is created

57 | to read:

58 | 856.022 Loitering or prowling by certain offenders in
 59 | close proximity to children; penalty.--

60 | (1) This section applies to an offender convicted of
 61 | committing, or attempting, soliciting, or conspiring to commit,
 62 | any of the criminal offenses proscribed in the following
 63 | statutes in this state or similar offenses in another
 64 | jurisdiction against a victim who was under the age of 18 at the
 65 | time of the offense: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 66 | where the victim is a minor and the offender was not the
 67 | victim's parent or guardian; s. 794.011, excluding s.
 68 | 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 69 | 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 70 | 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 71 | 985.701(1); or any similar offense committed in this state which
 72 | has been redesignated from a former statute number to one of
 73 | those listed in this subsection, if the offender has not
 74 | received a pardon for any felony or similar law of another
 75 | jurisdiction necessary for the operation of this subsection and
 76 | a conviction of a felony or similar law of another jurisdiction
 77 | necessary for the operation of this subsection has not been set
 78 | aside in any postconviction proceeding.

79 | (2) An offender described in subsection (1) commits
 80 | loitering and prowling by a person convicted of a sexual offense
 81 | against a minor if, in committing loitering and prowling, he or
 82 | she was within 300 feet of a place where children regularly
 83 | congregate, including, but not limited to, a school, day care
 84 | center, playground, or park.

85 (3) It is unlawful for an offender described in subsection

86 (1) to:

87 (a) Knowingly approach, contact, or communicate with a
 88 child under 18 years of age in any public park building or on
 89 real property comprising any public park or playground with
 90 intent to engage in conduct of a sexual nature, or to make a
 91 communication of any type containing any content of a sexual
 92 nature. This paragraph applies only to an offender described in
 93 subsection (1) whose offense was committed on or after July 1,
 94 2010.

95 (b)1. Knowingly be present in any child care facility or
 96 pre-K through 12 school or on real property comprising any child
 97 care facility or pre-K through 12 school when the child care
 98 facility or school is in operation unless the offender has
 99 provided written notification of his or her intent to be present
 100 to the school board, superintendent, principal, or child care
 101 facility owner.

102 2. Fail to notify the child care facility owner or the
 103 principal's office when he or she arrives and departs the child
 104 care facility or school.

105 3. Fail to remain under direct supervision of a school
 106 official or designated chaperone when present in the vicinity of
 107 children. As used in this subparagraph, the term "school
 108 official" means a principal, school resource officer, teacher or
 109 any other employee of the school, the superintendent of schools,
 110 a member of the school board, a child care facility owner, or a
 111 child care provider.

112 (4) The offender is not in violation of subsection (3) if:

113 (a) The child care facility or school is a voting location
 114 and the offender is present for the purpose of voting during the
 115 hours designated for voting; or

116 (b) The offender is only dropping off or picking up his or
 117 her own children or grandchildren at the child care facility or
 118 school.

119 (5) Any person who violates this section commits a
 120 misdemeanor of the first degree, punishable as provided in s.
 121 775.082 or s. 775.083.

122 Section 2. Paragraph (g) of subsection (2), paragraph (c)
 123 of subsection (4), paragraph (a) of subsection (5), paragraphs
 124 (a), (f), (g), (i), and (j) of subsection (6), paragraph (a) of
 125 subsection (7), and paragraph (a) of subsection (8) of section
 126 775.21, Florida Statutes, are amended, and paragraph (1) is
 127 added to subsection (2) of that section, to read:

128 775.21 The Florida Sexual Predators Act.--

129 (2) DEFINITIONS.--As used in this section, the term:

130 (g) "Temporary residence" means a place where the person
 131 abides, lodges, or resides, including, but not limited to,
 132 vacation, business, or personal travel destinations in or out of
 133 this state, for a period of 5 or more days in the aggregate
 134 during any calendar year and which is not the person's permanent
 135 address or, for a person whose permanent residence is not in
 136 this state, a place where the person is employed, practices a
 137 vocation, or is enrolled as a student for any period of time in
 138 this state.

139 (1) "Transient residence" means a place or county where a
 140 person lives, remains, or is located for a period of 5 or more

141 days in the aggregate during a calendar year and which is not
 142 the person's permanent or temporary address. The term includes,
 143 but is not limited to, a place where the person sleeps or seeks
 144 shelter and a location that has no specific street address.

145 (4) SEXUAL PREDATOR CRITERIA.--

146 (c) If an offender has been registered as a sexual
 147 predator by the Department of Corrections, the department, or
 148 any other law enforcement agency and if:

149 1. The court did not, for whatever reason, make a written
 150 finding at the time of sentencing that the offender was a sexual
 151 predator; or

152 2. The offender was administratively registered as a
 153 sexual predator because the Department of Corrections, the
 154 department, or any other law enforcement agency obtained
 155 information that indicated that the offender met the criteria
 156 for designation as a sexual predator based on a violation of a
 157 similar law in another jurisdiction,

158
 159 the department shall remove that offender from the department's
 160 list of sexual predators and, for an offender described under
 161 subparagraph 1., shall notify the state attorney who prosecuted
 162 the offense that met the criteria for administrative designation
 163 as a sexual predator, and, for an offender described under this
 164 paragraph, shall notify the state attorney of the county where
 165 the offender establishes or maintains a permanent, ~~or~~ temporary,
 166 or transient residence. The state attorney shall bring the
 167 matter to the court's attention in order to establish that the
 168 offender meets the criteria for designation as a sexual

169 predator. If the court makes a written finding that the offender
 170 is a sexual predator, the offender must be designated as a
 171 sexual predator, must register or be registered as a sexual
 172 predator with the department as provided in subsection (6), and
 173 is subject to the community and public notification as provided
 174 in subsection (7). If the court does not make a written finding
 175 that the offender is a sexual predator, the offender may not be
 176 designated as a sexual predator with respect to that offense and
 177 is not required to register or be registered as a sexual
 178 predator with the department.

179 (5) SEXUAL PREDATOR DESIGNATION.--An offender is
 180 designated as a sexual predator as follows:

181 (a)1. An offender who meets the sexual predator criteria
 182 described in paragraph (4)(d) is a sexual predator, and the
 183 court shall make a written finding at the time such offender is
 184 determined to be a sexually violent predator under chapter 394
 185 that such person meets the criteria for designation as a sexual
 186 predator for purposes of this section. The clerk shall transmit
 187 a copy of the order containing the written finding to the
 188 department within 48 hours after the entry of the order;

189 2. An offender who meets the sexual predator criteria
 190 described in paragraph (4)(a) who is before the court for
 191 sentencing for a current offense committed on or after October
 192 1, 1993, is a sexual predator, and the sentencing court must
 193 make a written finding at the time of sentencing that the
 194 offender is a sexual predator, and the clerk of the court shall
 195 transmit a copy of the order containing the written finding to
 196 the department within 48 hours after the entry of the order; or

197 3. If the Department of Corrections, the department, or
 198 any other law enforcement agency obtains information which
 199 indicates that an offender who establishes or maintains a
 200 permanent, ~~or~~ temporary, or transient residence in this state
 201 meets the sexual predator criteria described in paragraph (4)(a)
 202 or paragraph (4)(d) because the offender was civilly committed
 203 or committed a similar violation in another jurisdiction on or
 204 after October 1, 1993, the Department of Corrections, the
 205 department, or the law enforcement agency shall notify the state
 206 attorney of the county where the offender establishes or
 207 maintains a permanent, ~~or~~ temporary, or transient residence of
 208 the offender's presence in the community. The state attorney
 209 shall file a petition with the criminal division of the circuit
 210 court for the purpose of holding a hearing to determine if the
 211 offender's criminal record or record of civil commitment from
 212 another jurisdiction meets the sexual predator criteria. If the
 213 court finds that the offender meets the sexual predator criteria
 214 because the offender has violated a similar law or similar laws
 215 in another jurisdiction, the court shall make a written finding
 216 that the offender is a sexual predator.

217
 218 When the court makes a written finding that an offender is a
 219 sexual predator, the court shall inform the sexual predator of
 220 the registration and community and public notification
 221 requirements described in this section. Within 48 hours after
 222 the court designating an offender as a sexual predator, the
 223 clerk of the circuit court shall transmit a copy of the court's
 224 written sexual predator finding to the department. If the

225 offender is sentenced to a term of imprisonment or supervision,
 226 a copy of the court's written sexual predator finding must be
 227 submitted to the Department of Corrections.

228 (6) REGISTRATION.--

229 (a) A sexual predator must register with the department
 230 through the sheriff's office by providing the following
 231 information to the department:

232 1. Name, social security number, age, race, sex, date of
 233 birth, height, weight, hair and eye color, photograph, address
 234 of legal residence and address of any current temporary
 235 residence, within the state or out of state, including a rural
 236 route address and a post office box, if no permanent or
 237 temporary address, any transient residence within the state,
 238 address, location or description, and dates of any current or
 239 known future temporary residence within the state or out of
 240 state, any electronic mail address and any instant message name
 241 required to be provided pursuant to subparagraph (g)4., home
 242 telephone number and any cellular telephone number, date and
 243 place of any employment, date and place of each conviction,
 244 fingerprints, and a brief description of the crime or crimes
 245 committed by the offender. A post office box shall not be
 246 provided in lieu of a physical residential address.

247 a. If the sexual predator's place of residence is a motor
 248 vehicle, trailer, mobile home, or manufactured home, as defined
 249 in chapter 320, the sexual predator shall also provide to the
 250 department written notice of the vehicle identification number;
 251 the license tag number; the registration number; and a
 252 description, including color scheme, of the motor vehicle,

253 trailer, mobile home, or manufactured home. If a sexual
 254 predator's place of residence is a vessel, live-aboard vessel,
 255 or houseboat, as defined in chapter 327, the sexual predator
 256 shall also provide to the department written notice of the hull
 257 identification number; the manufacturer's serial number; the
 258 name of the vessel, live-aboard vessel, or houseboat; the
 259 registration number; and a description, including color scheme,
 260 of the vessel, live-aboard vessel, or houseboat.

261 b. If the sexual predator is enrolled, employed, or
 262 carrying on a vocation at an institution of higher education in
 263 this state, the sexual predator shall also provide to the
 264 department the name, address, and county of each institution,
 265 including each campus attended, and the sexual predator's
 266 enrollment or employment status. Each change in enrollment or
 267 employment status shall be reported in person at the sheriff's
 268 office, or the Department of Corrections if the sexual predator
 269 is in the custody or control of or under the supervision of the
 270 Department of Corrections, within 48 hours after any change in
 271 status. The sheriff or the Department of Corrections shall
 272 promptly notify each institution of the sexual predator's
 273 presence and any change in the sexual predator's enrollment or
 274 employment status.

275 2. Any other information determined necessary by the
 276 department, including criminal and corrections records;
 277 nonprivileged personnel and treatment records; and evidentiary
 278 genetic markers when available.

279 (f) Within 48 hours after the registration required under
 280 paragraph (a) or paragraph (e), a sexual predator who is not

281 | incarcerated and who resides in the community, including a
 282 | sexual predator under the supervision of the Department of
 283 | Corrections, shall register in person at a driver's license
 284 | office of the Department of Highway Safety and Motor Vehicles
 285 | and shall present proof of registration. At the driver's license
 286 | office the sexual predator shall:

287 | 1. If otherwise qualified, secure a Florida driver's
 288 | license, renew a Florida driver's license, or secure an
 289 | identification card. The sexual predator shall identify himself
 290 | or herself as a sexual predator who is required to comply with
 291 | this section, provide his or her place of permanent, ~~or~~
 292 | temporary, or transient residence, including a rural route
 293 | address and a post office box, and submit to the taking of a
 294 | photograph for use in issuing a driver's license, renewed
 295 | license, or identification card, and for use by the department
 296 | in maintaining current records of sexual predators. A post
 297 | office box shall not be provided in lieu of a physical
 298 | residential address. If the sexual predator's place of residence
 299 | is a motor vehicle, trailer, mobile home, or manufactured home,
 300 | as defined in chapter 320, the sexual predator shall also
 301 | provide to the Department of Highway Safety and Motor Vehicles
 302 | the vehicle identification number; the license tag number; the
 303 | registration number; and a description, including color scheme,
 304 | of the motor vehicle, trailer, mobile home, or manufactured
 305 | home. If a sexual predator's place of residence is a vessel,
 306 | live-aboard vessel, or houseboat, as defined in chapter 327, the
 307 | sexual predator shall also provide to the Department of Highway
 308 | Safety and Motor Vehicles the hull identification number; the

309 manufacturer's serial number; the name of the vessel, live-
 310 aboard vessel, or houseboat; the registration number; and a
 311 description, including color scheme, of the vessel, live-aboard
 312 vessel, or houseboat.

313 2. Pay the costs assessed by the Department of Highway
 314 Safety and Motor Vehicles for issuing or renewing a driver's
 315 license or identification card as required by this section. The
 316 driver's license or identification card issued to the sexual
 317 predator must be in compliance with s. 322.141(3).

318 3. Provide, upon request, any additional information
 319 necessary to confirm the identity of the sexual predator,
 320 including a set of fingerprints.

321 (g)1. Each time a sexual predator's driver's license or
 322 identification card is subject to renewal, and, without regard
 323 to the status of the predator's driver's license or
 324 identification card, within 48 hours after any change of the
 325 predator's residence or change in the predator's name by reason
 326 of marriage or other legal process, the predator shall report in
 327 person to a driver's license office and shall be subject to the
 328 requirements specified in paragraph (f). The Department of
 329 Highway Safety and Motor Vehicles shall forward to the
 330 department and to the Department of Corrections all photographs
 331 and information provided by sexual predators. Notwithstanding
 332 the restrictions set forth in s. 322.142, the Department of
 333 Highway Safety and Motor Vehicles is authorized to release a
 334 reproduction of a color-photograph or digital-image license to
 335 the Department of Law Enforcement for purposes of public
 336 notification of sexual predators as provided in this section.

337 2. A sexual predator who vacates a permanent, temporary,
 338 or transient residence and fails to establish or maintain
 339 another permanent, ~~or~~ temporary, or transient residence shall,
 340 within 48 hours after vacating the permanent, temporary, or
 341 transient residence, report in person to the sheriff's office of
 342 the county in which he or she is located. The sexual predator
 343 shall specify the date upon which he or she intends to or did
 344 vacate such residence. The sexual predator must provide or
 345 update all of the registration information required under
 346 paragraph (a). The sexual predator must provide an address for
 347 the residence or other place ~~location~~ that he or she is or will
 348 be located ~~occupying~~ during the time in which he or she fails to
 349 establish or maintain a permanent or temporary residence.

350 3. A sexual predator who remains at a permanent,
 351 temporary, or transient residence after reporting his or her
 352 intent to vacate such residence shall, within 48 hours after the
 353 date upon which the predator indicated he or she would or did
 354 vacate such residence, report in person to the sheriff's office
 355 to which he or she reported pursuant to subparagraph 2. for the
 356 purpose of reporting his or her address at such residence. When
 357 the sheriff receives the report, the sheriff shall promptly
 358 convey the information to the department. An offender who makes
 359 a report as required under subparagraph 2. but fails to make a
 360 report as required under this subparagraph commits a felony of
 361 the second degree, punishable as provided in s. 775.082, s.
 362 775.083, or s. 775.084.

363 4. A sexual predator must register any electronic mail
 364 address or instant message name with the department prior to

HB 119

2010

365 using such electronic mail address or instant message name on or
 366 after October 1, 2007. The department shall establish an online
 367 system through which sexual predators may securely access and
 368 update all electronic mail address and instant message name
 369 information.

370 (i) A sexual predator who intends to establish a
 371 permanent, temporary, or transient residence in another state or
 372 jurisdiction other than the State of Florida shall report in
 373 person to the sheriff of the county of current residence within
 374 48 hours before the date he or she intends to leave this state
 375 to establish residence in another state or jurisdiction. The
 376 sexual predator must provide to the sheriff the address,
 377 municipality, county, and state of intended residence. The
 378 sheriff shall promptly provide to the department the information
 379 received from the sexual predator. The department shall notify
 380 the statewide law enforcement agency, or a comparable agency, in
 381 the intended state or jurisdiction of residence of the sexual
 382 predator's intended residence. The failure of a sexual predator
 383 to provide his or her intended place of residence is punishable
 384 as provided in subsection (10).

385 (j) A sexual predator who indicates his or her intent to
 386 establish a permanent, temporary, or transient residence ~~reside~~
 387 in another state or jurisdiction other than the State of Florida
 388 and later decides to remain in this state shall, within 48 hours
 389 after the date upon which the sexual predator indicated he or
 390 she would leave this state, report in person to the sheriff to
 391 which the sexual predator reported the intended change of
 392 residence, and report his or her intent to remain in this state.

HB 119

2010

393 If the sheriff is notified by the sexual predator that he or she
 394 intends to remain in this state, the sheriff shall promptly
 395 report this information to the department. A sexual predator who
 396 reports his or her intent to establish a permanent, temporary,
 397 or transient residence ~~reside~~ in another state or jurisdiction,
 398 but who remains in this state without reporting to the sheriff
 399 in the manner required by this paragraph, commits a felony of
 400 the second degree, punishable as provided in s. 775.082, s.
 401 775.083, or s. 775.084.

402 (7) COMMUNITY AND PUBLIC NOTIFICATION.--

403 (a) Law enforcement agencies must inform members of the
 404 community and the public of a sexual predator's presence. Upon
 405 notification of the presence of a sexual predator, the sheriff
 406 of the county or the chief of police of the municipality where
 407 the sexual predator establishes or maintains a permanent or
 408 temporary residence shall notify members of the community and
 409 the public of the presence of the sexual predator in a manner
 410 deemed appropriate by the sheriff or the chief of police. Within
 411 48 hours after receiving notification of the presence of a
 412 sexual predator, the sheriff of the county or the chief of
 413 police of the municipality where the sexual predator temporarily
 414 or permanently resides shall notify each licensed day care
 415 center, elementary school, middle school, and high school within
 416 a 1-mile radius of the temporary or permanent residence of the
 417 sexual predator of the presence of the sexual predator.

418 Information provided to members of the community and the public
 419 regarding a sexual predator must include:

- 420 1. The name of the sexual predator;

421 2. A description of the sexual predator, including a
422 photograph;

423 3. The sexual predator's current permanent, temporary, and
424 transient addresses, and descriptions of registered locations
425 that have no specific street address, including the name of the
426 county or municipality if known;

427 4. The circumstances of the sexual predator's offense or
428 offenses; and

429 5. Whether the victim of the sexual predator's offense or
430 offenses was, at the time of the offense, a minor or an adult.

431

432 This paragraph does not authorize the release of the name of any
433 victim of the sexual predator.

434 (8) VERIFICATION.--The department and the Department of
435 Corrections shall implement a system for verifying the addresses
436 of sexual predators. The system must be consistent with the
437 provisions of the federal Adam Walsh Child Protection and Safety
438 Act of 2006 and any other federal standards applicable to such
439 verification or required to be met as a condition for the
440 receipt of federal funds by the state. The Department of
441 Corrections shall verify the addresses of sexual predators who
442 are not incarcerated but who reside in the community under the
443 supervision of the Department of Corrections and shall report to
444 the department any failure by a sexual predator to comply with
445 registration requirements. County and local law enforcement
446 agencies, in conjunction with the department, shall verify the
447 addresses of sexual predators who are not under the care,
448 custody, control, or supervision of the Department of

449 Corrections. Local law enforcement agencies shall report to the
 450 department any failure by a sexual predator to comply with
 451 registration requirements.

452 (a) A sexual predator must report in person each year
 453 during the month of the sexual predator's birthday and during
 454 every third month thereafter to the sheriff's office in the
 455 county in which he or she resides or is otherwise located to
 456 reregister. The sheriff's office may determine the appropriate
 457 times and days for reporting by the sexual predator, which shall
 458 be consistent with the reporting requirements of this paragraph.
 459 Reregistration shall include any changes to the following
 460 information:

461 1. Name; social security number; age; race; sex; date of
 462 birth; height; weight; hair and eye color; address of any
 463 permanent residence and address of any current temporary
 464 residence, within the state or out of state, including a rural
 465 route address and a post office box; if no permanent or
 466 temporary address, any transient residence within the state;
 467 address, location or description, and dates of any current or
 468 known future temporary residence within the state or out of
 469 state; any electronic mail address and any instant message name
 470 required to be provided pursuant to subparagraph (6)(g)4.; home
 471 telephone number and any cellular telephone number; date and
 472 place of any employment; vehicle make, model, color, and license
 473 tag number; fingerprints; and photograph. A post office box
 474 shall not be provided in lieu of a physical residential address.

475 2. If the sexual predator is enrolled, employed, or
 476 carrying on a vocation at an institution of higher education in

477 | this state, the sexual predator shall also provide to the
 478 | department the name, address, and county of each institution,
 479 | including each campus attended, and the sexual predator's
 480 | enrollment or employment status.

481 | 3. If the sexual predator's place of residence is a motor
 482 | vehicle, trailer, mobile home, or manufactured home, as defined
 483 | in chapter 320, the sexual predator shall also provide the
 484 | vehicle identification number; the license tag number; the
 485 | registration number; and a description, including color scheme,
 486 | of the motor vehicle, trailer, mobile home, or manufactured
 487 | home. If the sexual predator's place of residence is a vessel,
 488 | live-aboard vessel, or houseboat, as defined in chapter 327, the
 489 | sexual predator shall also provide the hull identification
 490 | number; the manufacturer's serial number; the name of the
 491 | vessel, live-aboard vessel, or houseboat; the registration
 492 | number; and a description, including color scheme, of the
 493 | vessel, live-aboard vessel, or houseboat.

494 | Section 3. Section 775.215, Florida Statutes, is created
 495 | to read:

496 | 775.215 Residency exclusions for sexual offenders or
 497 | predators; local ordinances preempted.--

498 | (1) The establishment of residency exclusions applicable
 499 | to the residence of a person required to register as a sexual
 500 | offender or sexual predator is expressly preempted to the state,
 501 | and the provisions of ss. 794.065, 947.1405, and 948.30
 502 | establishing such exclusions supersede any municipal or county
 503 | ordinances imposing different exclusions.

504 | (2) (a) Any provision of an ordinance adopted by a county

505 or municipality prior to July 1, 2010, imposing residency
 506 exclusions for the residence of a person subject to the
 507 provisions of s. 794.065, s. 947.1405, or s. 948.30 in excess of
 508 the requirements of those provisions is repealed and abolished
 509 as of July 1, 2010, except to the extent an ordinance as
 510 provided in paragraph (b) is adopted prior to that date.

511 (b) A county or municipality may, upon the recommendation
 512 of its chief law enforcement officer and upon a finding of
 513 public necessity, adopt an ordinance that increases the distance
 514 exclusions for the residence of a person subject to the
 515 provisions of s. 794.065, s. 947.1405, or s. 948.30 up to a
 516 maximum distance of 1,750 feet.

517 Section 4. Paragraph (c) of subsection (1), subsection
 518 (2), paragraphs (a), (b), and (c) of subsection (4), subsections
 519 (7), (8), and (10), and paragraph (c) of subsection (14) of
 520 section 943.0435, Florida Statutes, are amended to read:

521 943.0435 Sexual offenders required to register with the
 522 department; penalty.--

523 (1) As used in this section, the term:

524 (c) "Permanent residence," and "temporary residence," and
 525 "transient residence" have the same meaning ascribed in s.
 526 775.21.

527 (2) A sexual offender shall:

528 (a) Report in person at the sheriff's office:

529 1. In the county in which the offender establishes or
 530 maintains a permanent, ~~or~~ temporary, or transient residence
 531 within 48 hours after:

532 a. Establishing permanent, ~~or~~ temporary, or transient

533 residence in this state; or
 534 b. Being released from the custody, control, or
 535 supervision of the Department of Corrections or from the custody
 536 of a private correctional facility; or

537 2. In the county where he or she was convicted within 48
 538 hours after being convicted for a qualifying offense for
 539 registration under this section if the offender is not in the
 540 custody or control of, or under the supervision of, the
 541 Department of Corrections, or is not in the custody of a private
 542 correctional facility.

543
 544 Any change in the information required to be provided pursuant
 545 to paragraph (b), including, but not limited to, any change in
 546 the sexual offender's permanent, ~~or~~ temporary, or transient
 547 residence, name, any electronic mail address and any instant
 548 message name required to be provided pursuant to paragraph
 549 (4)(d), after the sexual offender reports in person at the
 550 sheriff's office, shall be accomplished in the manner provided
 551 in subsections (4), (7), and (8).

552 (b) Provide his or her name, date of birth, social
 553 security number, race, sex, height, weight, hair and eye color,
 554 tattoos or other identifying marks, occupation and place of
 555 employment, address of permanent or legal residence or address
 556 of any current temporary residence, within the state or and out
 557 of state, including a rural route address and a post office box,
 558 if no permanent or temporary address, any transient residence
 559 within the state, address, location or description, and dates of
 560 any current or known future temporary residence within the state

561 or out of state, home telephone number and any cellular
 562 telephone number, any electronic mail address and any instant
 563 message name required to be provided pursuant to paragraph
 564 (4) (d), date and place of each conviction, and a brief
 565 description of the crime or crimes committed by the offender. A
 566 post office box shall not be provided in lieu of a physical
 567 residential address.

568 1. If the sexual offender's place of residence is a motor
 569 vehicle, trailer, mobile home, or manufactured home, as defined
 570 in chapter 320, the sexual offender shall also provide to the
 571 department through the sheriff's office written notice of the
 572 vehicle identification number; the license tag number; the
 573 registration number; and a description, including color scheme,
 574 of the motor vehicle, trailer, mobile home, or manufactured
 575 home. If the sexual offender's place of residence is a vessel,
 576 live-aboard vessel, or houseboat, as defined in chapter 327, the
 577 sexual offender shall also provide to the department written
 578 notice of the hull identification number; the manufacturer's
 579 serial number; the name of the vessel, live-aboard vessel, or
 580 houseboat; the registration number; and a description, including
 581 color scheme, of the vessel, live-aboard vessel, or houseboat.

582 2. If the sexual offender is enrolled, employed, or
 583 carrying on a vocation at an institution of higher education in
 584 this state, the sexual offender shall also provide to the
 585 department through the sheriff's office the name, address, and
 586 county of each institution, including each campus attended, and
 587 the sexual offender's enrollment or employment status. Each
 588 change in enrollment or employment status shall be reported in

589 person at the sheriff's office, within 48 hours after any change
 590 in status. The sheriff shall promptly notify each institution of
 591 the sexual offender's presence and any change in the sexual
 592 offender's enrollment or employment status.

593
 594 When a sexual offender reports at the sheriff's office, the
 595 sheriff shall take a photograph and a set of fingerprints of the
 596 offender and forward the photographs and fingerprints to the
 597 department, along with the information provided by the sexual
 598 offender. The sheriff shall promptly provide to the department
 599 the information received from the sexual offender.

600 (4)(a) Each time a sexual offender's driver's license or
 601 identification card is subject to renewal, and, without regard
 602 to the status of the offender's driver's license or
 603 identification card, within 48 hours after any change in the
 604 offender's permanent, ~~or~~ temporary, or transient residence or
 605 change in the offender's name by reason of marriage or other
 606 legal process, the offender shall report in person to a driver's
 607 license office, and shall be subject to the requirements
 608 specified in subsection (3). The Department of Highway Safety
 609 and Motor Vehicles shall forward to the department all
 610 photographs and information provided by sexual offenders.
 611 Notwithstanding the restrictions set forth in s. 322.142, the
 612 Department of Highway Safety and Motor Vehicles is authorized to
 613 release a reproduction of a color-photograph or digital-image
 614 license to the Department of Law Enforcement for purposes of
 615 public notification of sexual offenders as provided in this
 616 section and ss. 943.043 and 944.606.

617 (b) A sexual offender who vacates a permanent, temporary,
 618 or transient residence and fails to establish or maintain
 619 another permanent, ~~or temporary,~~ or transient residence shall,
 620 within 48 hours after vacating the permanent, temporary, or
 621 transient residence, report in person to the sheriff's office of
 622 the county in which he or she is located. The sexual offender
 623 shall specify the date upon which he or she intends to or did
 624 vacate such residence. The sexual offender must provide or
 625 update all of the registration information required under
 626 paragraph (2)(b). The sexual offender must provide an address
 627 for the residence or other place ~~location~~ that he or she is or
 628 will be located ~~occupying~~ during the time in which he or she
 629 fails to establish or maintain a permanent or temporary
 630 residence.

631 (c) A sexual offender who remains at a permanent,
 632 temporary, or transient residence after reporting his or her
 633 intent to vacate such residence shall, within 48 hours after the
 634 date upon which the offender indicated he or she would or did
 635 vacate such residence, report in person to the agency to which
 636 he or she reported pursuant to paragraph (b) for the purpose of
 637 reporting his or her address at such residence. When the sheriff
 638 receives the report, the sheriff shall promptly convey the
 639 information to the department. An offender who makes a report as
 640 required under paragraph (b) but fails to make a report as
 641 required under this paragraph commits a felony of the second
 642 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 643 775.084.

644 (7) A sexual offender who intends to establish a

645 permanent, temporary, or transient residence in another state or
 646 jurisdiction other than the State of Florida shall report in
 647 person to the sheriff of the county of current residence within
 648 48 hours before the date he or she intends to leave this state
 649 to establish residence in another state or jurisdiction. The
 650 notification must include the address, municipality, county, and
 651 state of intended residence. The sheriff shall promptly provide
 652 to the department the information received from the sexual
 653 offender. The department shall notify the statewide law
 654 enforcement agency, or a comparable agency, in the intended
 655 state or jurisdiction of residence of the sexual offender's
 656 intended residence. The failure of a sexual offender to provide
 657 his or her intended place of residence is punishable as provided
 658 in subsection (9).

659 (8) A sexual offender who indicates his or her intent to
 660 establish a permanent, temporary, or transient residence ~~reside~~
 661 in another state or jurisdiction other than the State of Florida
 662 and later decides to remain in this state shall, within 48 hours
 663 after the date upon which the sexual offender indicated he or
 664 she would leave this state, report in person to the sheriff to
 665 which the sexual offender reported the intended change of
 666 permanent, temporary, or transient residence, and report his or
 667 her intent to remain in this state. The sheriff shall promptly
 668 report this information to the department. A sexual offender who
 669 reports his or her intent to establish a permanent, temporary,
 670 or transient residence ~~reside~~ in another state or jurisdiction
 671 but who remains in this state without reporting to the sheriff
 672 in the manner required by this subsection commits a felony of

673 the second degree, punishable as provided in s. 775.082, s.
 674 775.083, or s. 775.084.

675 (10) The department, the Department of Highway Safety and
 676 Motor Vehicles, the Department of Corrections, the Department of
 677 Juvenile Justice, any law enforcement agency in this state, and
 678 the personnel of those departments; an elected or appointed
 679 official, public employee, or school administrator; or an
 680 employee, agency, or any individual or entity acting at the
 681 request or upon the direction of any law enforcement agency is
 682 immune from civil liability for damages for good faith
 683 compliance with the requirements of this section or for the
 684 release of information under this section, and shall be presumed
 685 to have acted in good faith in compiling, recording, reporting,
 686 or releasing the information. The presumption of good faith is
 687 not overcome if a technical or clerical error is made by the
 688 department, the Department of Highway Safety and Motor Vehicles,
 689 the Department of Corrections, the Department of Juvenile
 690 Justice, the personnel of those departments, or any individual
 691 or entity acting at the request or upon the direction of any of
 692 those departments in compiling or providing information, or if
 693 information is incomplete or incorrect because a sexual offender
 694 fails to report or falsely reports his or her current place of
 695 permanent, ~~or~~ temporary, or transient residence.

696 (14)

697 (c) The sheriff's office may determine the appropriate
 698 times and days for reporting by the sexual offender, which shall
 699 be consistent with the reporting requirements of this
 700 subsection. Reregistration shall include any changes to the

701 following information:

702 1. Name; social security number; age; race; sex; date of
 703 birth; height; weight; hair and eye color; address of any
 704 permanent residence and address of any current temporary
 705 residence, within the state or out of state, including a rural
 706 route address and a post office box; if no permanent or
 707 temporary address, any transient residence within the state;
 708 address, location or description, and dates of any current or
 709 known future temporary residence within the state or out of
 710 state; any electronic mail address and any instant message name
 711 required to be provided pursuant to paragraph (4)(d); home
 712 telephone number and any cellular telephone number; date and
 713 place of any employment; vehicle make, model, color, and license
 714 tag number; fingerprints; and photograph. A post office box
 715 shall not be provided in lieu of a physical residential address.

716 2. If the sexual offender is enrolled, employed, or
 717 carrying on a vocation at an institution of higher education in
 718 this state, the sexual offender shall also provide to the
 719 department the name, address, and county of each institution,
 720 including each campus attended, and the sexual offender's
 721 enrollment or employment status.

722 3. If the sexual offender's place of residence is a motor
 723 vehicle, trailer, mobile home, or manufactured home, as defined
 724 in chapter 320, the sexual offender shall also provide the
 725 vehicle identification number; the license tag number; the
 726 registration number; and a description, including color scheme,
 727 of the motor vehicle, trailer, mobile home, or manufactured
 728 home. If the sexual offender's place of residence is a vessel,

HB 119

2010

729 live-aboard vessel, or houseboat, as defined in chapter 327, the
 730 sexual offender shall also provide the hull identification
 731 number; the manufacturer's serial number; the name of the
 732 vessel, live-aboard vessel, or houseboat; the registration
 733 number; and a description, including color scheme, of the
 734 vessel, live-aboard vessel or houseboat.

735 4. Any sexual offender who fails to report in person as
 736 required at the sheriff's office, or who fails to respond to any
 737 address verification correspondence from the department within 3
 738 weeks of the date of the correspondence or who fails to report
 739 electronic mail addresses or instant message names, commits a
 740 felony of the third degree, punishable as provided in s.
 741 775.082, s. 775.083, or s. 775.084.

742 Section 5. Section 943.04352, Florida Statutes, is amended
 743 to read:

744 943.04352 Search of registration information regarding
 745 sexual predators and sexual offenders required when placement on
 746 misdemeanor probation.--When the court places a defendant on
 747 misdemeanor probation pursuant to ss. 948.01 and 948.15, the
 748 public or private entity providing probation services must
 749 conduct a search of the probationer's name or other identifying
 750 information against the registration information regarding
 751 sexual predators and sexual offenders maintained by the
 752 Department of Law Enforcement under s. 943.043. The probation
 753 services provider may conduct the search using the Internet site
 754 maintained by the Department of Law Enforcement. Also, a
 755 national search must be conducted through the Dru Sjodin
 756 National Sex Offender Public Website maintained by the United

757 States Department of Justice.

758 Section 6. Paragraph (a) of subsection (3) of section
759 944.606, Florida Statutes, is amended to read:

760 944.606 Sexual offenders; notification upon release.--

761 (3) (a) The department must provide information regarding
762 any sexual offender who is being released after serving a period
763 of incarceration for any offense, as follows:

764 1. The department must provide: the sexual offender's
765 name, any change in the offender's name by reason of marriage or
766 other legal process, and any alias, if known; the correctional
767 facility from which the sexual offender is released; the sexual
768 offender's social security number, race, sex, date of birth,
769 height, weight, and hair and eye color; address of any planned
770 permanent residence or temporary residence, within the state or
771 out of state, including a rural route address and a post office
772 box; if no permanent or temporary address, any transient
773 residence within the state; address, location or description,
774 and dates of any known future temporary residence within the
775 state or out of state; date and county of sentence and each
776 crime for which the offender was sentenced; a copy of the
777 offender's fingerprints and a digitized photograph taken within
778 60 days before release; the date of release of the sexual
779 offender; any electronic mail address and any instant message
780 name required to be provided pursuant to s. 943.0435(4) (d); and
781 home telephone number and any cellular telephone number; and the
782 offender's intended residence address, if known. The department
783 shall notify the Department of Law Enforcement if the sexual
784 offender escapes, absconds, or dies. If the sexual offender is

785 in the custody of a private correctional facility, the facility
 786 shall take the digitized photograph of the sexual offender
 787 within 60 days before the sexual offender's release and provide
 788 this photograph to the Department of Corrections and also place
 789 it in the sexual offender's file. If the sexual offender is in
 790 the custody of a local jail, the custodian of the local jail
 791 shall register the offender within 3 business days after intake
 792 of the offender for any reason and upon release, and shall
 793 notify the Department of Law Enforcement of the sexual
 794 offender's release and provide to the Department of Law
 795 Enforcement the information specified in this paragraph and any
 796 information specified in subparagraph 2. that the Department of
 797 Law Enforcement requests.

798 2. The department may provide any other information deemed
 799 necessary, including criminal and corrections records,
 800 nonprivileged personnel and treatment records, when available.

801 Section 7. Subsections (4) and (6) and paragraph (c) of
 802 subsection (13) of section 944.607, Florida Statutes, are
 803 amended to read:

804 944.607 Notification to Department of Law Enforcement of
 805 information on sexual offenders.--

806 (4) A sexual offender, as described in this section, who
 807 is under the supervision of the Department of Corrections but is
 808 not incarcerated must register with the Department of
 809 Corrections within 3 business days after sentencing for a
 810 registrable ~~registerable~~ offense and otherwise provide
 811 information as required by this subsection.

812 (a) The sexual offender shall provide his or her name;

813 date of birth; social security number; race; sex; height;
 814 weight; hair and eye color; tattoos or other identifying marks;
 815 any electronic mail address and any instant message name
 816 required to be provided pursuant to s. 943.0435(4)(d); ~~and~~
 817 permanent or legal residence and address of temporary residence
 818 within the state or out of state while the sexual offender is
 819 under supervision in this state, including any rural route
 820 address or post office box; if no permanent or temporary
 821 address, any transient residence within the state; and address,
 822 location or description, and dates of any current or known
 823 future temporary residence within the state or out of state. The
 824 Department of Corrections shall verify the address of each
 825 sexual offender in the manner described in ss. 775.21 and
 826 943.0435. The department shall report to the Department of Law
 827 Enforcement any failure by a sexual predator or sexual offender
 828 to comply with registration requirements.

829 (b) If the sexual offender is enrolled, employed, or
 830 carrying on a vocation at an institution of higher education in
 831 this state, the sexual offender shall provide the name, address,
 832 and county of each institution, including each campus attended,
 833 and the sexual offender's enrollment or employment status. Each
 834 change in enrollment or employment status shall be reported to
 835 the department within 48 hours after the change in status. The
 836 Department of Corrections shall promptly notify each institution
 837 of the sexual offender's presence and any change in the sexual
 838 offender's enrollment or employment status.

839 (6) The information provided to the Department of Law
 840 Enforcement must include:

841 (a) The information obtained from the sexual offender
 842 under subsection (4);

843 (b) The sexual offender's most current address, ~~and~~ place
 844 of permanent, ~~and~~ temporary, or transient residence within the
 845 state or out of state, and address, location or description, and
 846 dates of any current or known future temporary residence within
 847 the state or out of state, while the sexual offender is under
 848 supervision in this state, including the name of the county or
 849 municipality in which the offender permanently or temporarily
 850 resides, or has a transient residence, and address, location or
 851 description, and dates of any current or known future temporary
 852 residence within the state or out of state, and, if known, the
 853 intended place of permanent, ~~or~~ temporary, or transient
 854 residence, and address, location or description, and dates of
 855 any current or known future temporary residence within the state
 856 or out of state upon satisfaction of all sanctions;

857 (c) The legal status of the sexual offender and the
 858 scheduled termination date of that legal status;

859 (d) The location of, and local telephone number for, any
 860 Department of Corrections' office that is responsible for
 861 supervising the sexual offender;

862 (e) An indication of whether the victim of the offense
 863 that resulted in the offender's status as a sexual offender was
 864 a minor;

865 (f) The offense or offenses at conviction which resulted
 866 in the determination of the offender's status as a sex offender;
 867 and

868 (g) A digitized photograph of the sexual offender which

869 must have been taken within 60 days before the offender is
 870 released from the custody of the department or a private
 871 correctional facility by expiration of sentence under s. 944.275
 872 or must have been taken by January 1, 1998, or within 60 days
 873 after the onset of the department's supervision of any sexual
 874 offender who is on probation, community control, conditional
 875 release, parole, provisional release, or control release or who
 876 is supervised by the department under the Interstate Compact
 877 Agreement for Probationers and Parolees. If the sexual offender
 878 is in the custody of a private correctional facility, the
 879 facility shall take a digitized photograph of the sexual
 880 offender within the time period provided in this paragraph and
 881 shall provide the photograph to the department.

882

883 If any information provided by the department changes during the
 884 time the sexual offender is under the department's control,
 885 custody, or supervision, including any change in the offender's
 886 name by reason of marriage or other legal process, the
 887 department shall, in a timely manner, update the information and
 888 provide it to the Department of Law Enforcement in the manner
 889 prescribed in subsection (2).

890 (13)

891 (c) The sheriff's office may determine the appropriate
 892 times and days for reporting by the sexual offender, which shall
 893 be consistent with the reporting requirements of this
 894 subsection. Reregistration shall include any changes to the
 895 following information:

896 1. Name; social security number; age; race; sex; date of

897 birth; height; weight; hair and eye color; address of any
 898 permanent residence and address of any current temporary
 899 residence, within the state or out of state, including a rural
 900 route address and a post office box; if no permanent or
 901 temporary address, any transient residence; address, location or
 902 description, and dates of any current or known future temporary
 903 residence within the state or out of state; any electronic mail
 904 address and any instant message name required to be provided
 905 pursuant to s. 943.0435(4)(d); date and place of any employment;
 906 vehicle make, model, color, and license tag number;
 907 fingerprints; and photograph. A post office box shall not be
 908 provided in lieu of a physical residential address.

909 2. If the sexual offender is enrolled, employed, or
 910 carrying on a vocation at an institution of higher education in
 911 this state, the sexual offender shall also provide to the
 912 department the name, address, and county of each institution,
 913 including each campus attended, and the sexual offender's
 914 enrollment or employment status.

915 3. If the sexual offender's place of residence is a motor
 916 vehicle, trailer, mobile home, or manufactured home, as defined
 917 in chapter 320, the sexual offender shall also provide the
 918 vehicle identification number; the license tag number; the
 919 registration number; and a description, including color scheme,
 920 of the motor vehicle, trailer, mobile home, or manufactured
 921 home. If the sexual offender's place of residence is a vessel,
 922 live-aboard vessel, or houseboat, as defined in chapter 327, the
 923 sexual offender shall also provide the hull identification
 924 number; the manufacturer's serial number; the name of the

925 vessel, live-aboard vessel, or houseboat; the registration
 926 number; and a description, including color scheme, of the
 927 vessel, live-aboard vessel or houseboat.

928 4. Any sexual offender who fails to report in person as
 929 required at the sheriff's office, or who fails to respond to any
 930 address verification correspondence from the department within 3
 931 weeks of the date of the correspondence, or who fails to report
 932 electronic mail addresses or instant message names, commits a
 933 felony of the third degree, punishable as provided in s.
 934 775.082, s. 775.083, or s. 775.084.

935 Section 8. Paragraph (b) of subsection (7) of section
 936 947.1405, Florida Statutes, is amended, and subsection (12) is
 937 added to that section, to read:

938 947.1405 Conditional release program.--
 939 (7)

940 (b) For a releasee whose crime was committed on or after
 941 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 942 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 943 conditional release supervision, in addition to any other
 944 provision of this subsection, the commission shall impose the
 945 following additional conditions of conditional release
 946 supervision:

947 1. As part of a treatment program, participation in a
 948 minimum of one annual polygraph examination to obtain
 949 information necessary for risk management and treatment and to
 950 reduce the sex offender's denial mechanisms. The polygraph
 951 examination must be conducted by a polygrapher trained
 952 specifically in the use of the polygraph for the monitoring of

953 sex offenders who has been authorized by the department, where
 954 available, and at the expense of the releasee ~~sex offender~~. The
 955 results of the examination shall be provided to the releasee's
 956 probation officer and therapist and may not be used as evidence
 957 in a hearing to prove that a violation of supervision has
 958 occurred.

959 2. Maintenance of a driving log and a prohibition against
 960 driving a motor vehicle alone without the prior approval of the
 961 supervising officer.

962 3. A prohibition against obtaining or using a post office
 963 box without the prior approval of the supervising officer.

964 4. If there was sexual contact, a submission to, at the
 965 releasee's ~~probationer's or community controllee's~~ expense, an
 966 HIV test with the results to be released to the victim or the
 967 victim's parent or guardian.

968 5. Electronic monitoring of any form when ordered by the
 969 commission. Any person who has been placed under supervision and
 970 is electronically monitored by the department must pay the
 971 department for the cost of the electronic monitoring service at
 972 a rate that may not exceed the full cost of the monitoring
 973 service. Funds collected under this subparagraph shall be
 974 deposited into the General Revenue Fund. The department may
 975 exempt a person from the payment of all or any part of the
 976 electronic monitoring service cost if the department finds that
 977 any of the factors listed in s. 948.09(3) exist.

978 (12) In addition to all other conditions imposed, for a
 979 releasee who is subject to conditional release for a crime that
 980 was committed on or after July 1, 2010, and who has been

981 convicted at any time of committing, or attempting, soliciting,
 982 or conspiring to commit, any of the criminal offenses proscribed
 983 in the following statutes in this state or similar offenses in
 984 another jurisdiction against a victim who was under the age of
 985 18 at the time of the offense: s. 787.01, s. 787.02, or s.
 986 787.025(2)(c), where the victim is a minor and the offender was
 987 not the victim's parent or guardian; s. 794.011, excluding s.
 988 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 989 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 990 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 991 985.701(1); or any similar offense committed in this state which
 992 has been redesignated from a former statute number to one of
 993 those listed in this subsection, if the offender has not
 994 received a pardon for any felony or similar law of another
 995 jurisdiction necessary for the operation of this subsection and
 996 a conviction of a felony or similar law of another jurisdiction
 997 necessary for the operation of this subsection has not been set
 998 aside in any postconviction proceeding, unless at the time of
 999 the crime was committed the victim was 16 or 17 years of age and
 1000 the releasee was not more than 21 years of age, the commission
 1001 must impose the following conditions:

1002 (a) A prohibition on visiting areas where children
 1003 regularly congregate, including, but not limited to, schools,
 1004 day care centers, parks, and playgrounds. The commission may
 1005 also designate additional locations to protect a victim. The
 1006 prohibition ordered under this paragraph does not prohibit the
 1007 releasee's attendance at religious services as defined in s.
 1008 775.0861.

HB 119

2010

1009 (b) A prohibition on distributing candy or other items to
 1010 children on Halloween; wearing a Santa Claus costume, or other
 1011 costume to appeal to children, on or preceding Christmas;
 1012 wearing an Easter Bunny costume, or other costume to appeal to
 1013 children, on or preceding Easter; entertaining at children's
 1014 parties; or wearing a clown costume; without prior approval from
 1015 the commission.

1016 Section 9. Paragraph (a) of subsection (2) of section
 1017 948.30, Florida Statutes, is amended, and subsection (4) is
 1018 added to that section, to read:

1019 948.30 Additional terms and conditions of probation or
 1020 community control for certain sex offenses.--Conditions imposed
 1021 pursuant to this section do not require oral pronouncement at
 1022 the time of sentencing and shall be considered standard
 1023 conditions of probation or community control for offenders
 1024 specified in this section.

1025 (2) Effective for a probationer or community controllee
 1026 whose crime was committed on or after October 1, 1997, and who
 1027 is placed on community control or sex offender probation for a
 1028 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
 1029 or s. 847.0145, in addition to any other provision of this
 1030 section, the court must impose the following conditions of
 1031 probation or community control:

1032 (a) As part of a treatment program, participation at least
 1033 annually in polygraph examinations to obtain information
 1034 necessary for risk management and treatment and to reduce the
 1035 sex offender's denial mechanisms. A polygraph examination must
 1036 be conducted by a polygrapher trained specifically in the use of

1037 the polygraph for the monitoring of sex offenders who has been
 1038 authorized by the department, where available, and shall be paid
 1039 for by the probationer or community controllee ~~sex offender~~. The
 1040 results of the polygraph examination shall be provided to the
 1041 probationer's or community controllee's probation officer and
 1042 therapist and shall not be used as evidence in court to prove
 1043 that a violation of community supervision has occurred.

1044 (4) In addition to all other conditions imposed, for a
 1045 probationer or community controllee who is subject to
 1046 supervision for a crime that was committed on or after July 1,
 1047 2010, and who has been convicted at any time of committing, or
 1048 attempting, soliciting, or conspiring to commit, any of the
 1049 criminal offenses proscribed in the following statutes in this
 1050 state or similar offenses in another jurisdiction against a
 1051 victim who was under the age of 18 at the time of the offense:
 1052 s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 1053 minor and the offender was not the victim's parent or guardian;
 1054 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 1055 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 1056 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 1057 847.0145; s. 985.701(1); or any similar offense committed in
 1058 this state which has been redesignated from a former statute
 1059 number to one of those listed in this subsection, if the
 1060 offender has not received a pardon for any felony or similar law
 1061 of another jurisdiction necessary for the operation of this
 1062 subsection and a conviction of a felony or similar law of
 1063 another jurisdiction necessary for the operation of this
 1064 subsection has not been set aside in any postconviction

HB 119

2010

1065 proceeding, unless at the time the crime was committed the
 1066 victim was 16 or 17 years of age and the offender was not more
 1067 than 21 years of age, the court must impose the following
 1068 conditions:

1069 (a) A prohibition on visiting areas where children
 1070 regularly congregate, including, but not limited to, schools,
 1071 day care centers, parks, and playgrounds. The commission may
 1072 also designate additional locations to protect a victim. The
 1073 prohibition ordered under this paragraph does not prohibit the
 1074 releasee's attendance at religious services as defined in s.
 1075 775.0861.

1076 (b) A prohibition on distributing candy or other items to
 1077 children on Halloween; wearing a Santa Claus costume, or other
 1078 costume to appeal to children, on or preceding Christmas;
 1079 wearing an Easter Bunny costume, or other costume to appeal to
 1080 children, on or preceding Easter; entertaining at children's
 1081 parties; or wearing a clown costume; without prior approval from
 1082 the commission.

1083 Section 10. Section 948.31, Florida Statutes, is amended
 1084 to read:

1085 948.31 ~~Diagnosis, Evaluation, and treatment of~~ sexual
 1086 predators and offenders placed on probation or community control
 1087 ~~for certain sex offenses or child exploitation.--The court shall~~
 1088 ~~require an a diagnosis and evaluation to determine the need of a~~
 1089 ~~probationer or community controlee offender in community control~~
 1090 ~~for treatment. If the court determines that a need therefor is~~
 1091 ~~established by the such diagnosis and evaluation process, the~~
 1092 ~~court shall require~~ sexual offender treatment outpatient

HB 119

2010

1093 ~~counseling~~ as a term or condition of probation or community
 1094 control for any person who meets the criteria to be designated
 1095 as a sexual predator under s. 775.21 or to be subject to
 1096 registration as a sexual offender under s. 943.0435, s. 944.606,
 1097 or s. 944.607. was found guilty of any of the following, or
 1098 whose plea of guilty or nolo contendere to any of the following
 1099 was accepted by the court:

1100 ~~(1) Lewd or lascivious battery, lewd or lascivious~~
 1101 ~~molestation, lewd or lascivious conduct, or lewd or lascivious~~
 1102 ~~exhibition, as defined in s. 800.04 or s. 847.0135(5).~~

1103 ~~(2) Sexual battery, as defined in chapter 794, against a~~
 1104 ~~child.~~

1105 ~~(3) Exploitation of a child as provided in s. 450.151, or~~
 1106 ~~for prostitution.~~

1107
 1108 Such treatment ~~counseling~~ shall be required to be obtained from
 1109 a qualified practitioner as defined in s. 948.001. Treatment may
 1110 not be administered by a qualified practitioner who has been
 1111 convicted or adjudicated delinquent of committing, or
 1112 attempting, soliciting, or conspiring to commit, any offense
 1113 that is listed in s. 943.0435(1)(a)1.a.(I). The court shall
 1114 impose a restriction against contact with minors if sexual
 1115 offender treatment is recommended ~~a community mental health~~
 1116 ~~center, a recognized social service agency providing mental~~
 1117 ~~health services, or a private mental health professional or~~
 1118 ~~through other professional counseling. The evaluation and~~
 1119 ~~recommendations plan for treatment of counseling for the~~
 1120 probationer or community controllee individual shall be provided

HB 119

2010

1121 to the court for review.

1122 Section 11. Paragraph (a) of subsection (3) of section
 1123 985.481, Florida Statutes, is amended to read:

1124 985.481 Sexual offenders adjudicated delinquent;
 1125 notification upon release.--

1126 (3)(a) The department must provide information regarding
 1127 any sexual offender who is being released after serving a period
 1128 of residential commitment under the department for any offense,
 1129 as follows:

1130 1. The department must provide the sexual offender's name,
 1131 any change in the offender's name by reason of marriage or other
 1132 legal process, and any alias, if known; the correctional
 1133 facility from which the sexual offender is released; the sexual
 1134 offender's social security number, race, sex, date of birth,
 1135 height, weight, and hair and eye color; address of any planned
 1136 permanent residence or temporary residence, within the state or
 1137 out of state, including a rural route address and a post office
 1138 box; if no permanent or temporary address, any transient
 1139 residence within the state; address, location or description,
 1140 and dates of any known future temporary residence within the
 1141 state or out of state; date and county of disposition and each
 1142 crime for which there was a disposition; a copy of the
 1143 offender's fingerprints and a digitized photograph taken within
 1144 60 days before release; the date of release of the sexual
 1145 offender; and home telephone number and any cellular telephone
 1146 number; and the offender's intended residence address, if known.
 1147 The department shall notify the Department of Law Enforcement if
 1148 the sexual offender escapes, absconds, or dies. If the sexual

1149 offender is in the custody of a private correctional facility,
 1150 the facility shall take the digitized photograph of the sexual
 1151 offender within 60 days before the sexual offender's release and
 1152 also place it in the sexual offender's file. If the sexual
 1153 offender is in the custody of a local jail, the custodian of the
 1154 local jail shall register the offender within 3 business days
 1155 after intake of the offender for any reason and upon release,
 1156 and shall notify the Department of Law Enforcement of the sexual
 1157 offender's release and provide to the Department of Law
 1158 Enforcement the information specified in this subparagraph and
 1159 any information specified in subparagraph 2. which the
 1160 Department of Law Enforcement requests.

1161 2. The department may provide any other information
 1162 considered necessary, including criminal and delinquency
 1163 records, when available.

1164 Section 12. Paragraph (a) of subsection (4), paragraph (a)
 1165 of subsection (6), and paragraph (b) of subsection (13) of
 1166 section 985.4815, Florida Statutes, are amended to read:

1167 985.4815 Notification to Department of Law Enforcement of
 1168 information on juvenile sexual offenders.--

1169 (4) A sexual offender, as described in this section, who
 1170 is under the supervision of the department but who is not
 1171 committed must register with the department within 3 business
 1172 days after adjudication and disposition for a registrable
 1173 offense and otherwise provide information as required by this
 1174 subsection.

1175 (a) The sexual offender shall provide his or her name;
 1176 date of birth; social security number; race; sex; height;

HB 119

2010

1177 weight; hair and eye color; tattoos or other identifying marks;
 1178 ~~and~~ permanent or legal residence and address of temporary
 1179 residence within the state or out of state while the sexual
 1180 offender is in the care or custody or under the jurisdiction or
 1181 supervision of the department in this state, including any rural
 1182 route address or post office box; if no permanent or temporary
 1183 address, any transient residence; address, location or
 1184 description, and dates of any current or known future temporary
 1185 residence within the state or out of state;~~7~~ and the name and
 1186 address of each school attended. The department shall verify the
 1187 address of each sexual offender and shall report to the
 1188 Department of Law Enforcement any failure by a sexual offender
 1189 to comply with registration requirements.

1190 (6) (a) The information provided to the Department of Law
 1191 Enforcement must include the following:

1192 1. The information obtained from the sexual offender under
 1193 subsection (4).

1194 2. The sexual offender's most current address and place of
 1195 permanent, ~~or~~ temporary, or transient residence within the state
 1196 or out of state, and address, location or description, and dates
 1197 of any current or known future temporary residence within the
 1198 state or out of state, while the sexual offender is in the care
 1199 or custody or under the jurisdiction or supervision of the
 1200 department in this state, including the name of the county or
 1201 municipality in which the offender permanently or temporarily
 1202 resides, or has a transient residence, and address, location or
 1203 description, and dates of any current or known future temporary
 1204 residence within the state or out of state; and, if known, the

1205 | intended place of permanent, ~~or~~ temporary, or transient
 1206 | residence, and address, location or description, and dates of
 1207 | any current or known future temporary residence within the state
 1208 | or out of state upon satisfaction of all sanctions.

1209 | 3. The legal status of the sexual offender and the
 1210 | scheduled termination date of that legal status.

1211 | 4. The location of, and local telephone number for, any
 1212 | department office that is responsible for supervising the sexual
 1213 | offender.

1214 | 5. An indication of whether the victim of the offense that
 1215 | resulted in the offender's status as a sexual offender was a
 1216 | minor.

1217 | 6. The offense or offenses at adjudication and disposition
 1218 | that resulted in the determination of the offender's status as a
 1219 | sex offender.

1220 | 7. A digitized photograph of the sexual offender, which
 1221 | must have been taken within 60 days before the offender was
 1222 | released from the custody of the department or a private
 1223 | correctional facility by expiration of sentence under s.
 1224 | 944.275, or within 60 days after the onset of the department's
 1225 | supervision of any sexual offender who is on probation,
 1226 | postcommitment probation, residential commitment, nonresidential
 1227 | commitment, licensed child-caring commitment, community control,
 1228 | conditional release, parole, provisional release, or control
 1229 | release or who is supervised by the department under the
 1230 | Interstate Compact Agreement for Probationers and Parolees. If
 1231 | the sexual offender is in the custody of a private correctional
 1232 | facility, the facility shall take a digitized photograph of the

HB 119

2010

1233 sexual offender within the time period provided in this
 1234 subparagraph and shall provide the photograph to the department.

1235 (13)

1236 (b) The sheriff's office may determine the appropriate
 1237 times and days for reporting by the sexual offender, which shall
 1238 be consistent with the reporting requirements of this
 1239 subsection. Reregistration shall include any changes to the
 1240 following information:

1241 1. Name; social security number; age; race; sex; date of
 1242 birth; height; weight; hair and eye color; address of any
 1243 permanent residence and address of any current temporary
 1244 residence, within the state or out of state, including a rural
 1245 route address and a post office box; if no permanent or
 1246 temporary address, any transient residence; address, location or
 1247 description, and dates of any current or known future temporary
 1248 residence within the state or out of state; name and address of
 1249 each school attended; date and place of any employment; vehicle
 1250 make, model, color, and license tag number; fingerprints; and
 1251 photograph. A post office box shall not be provided in lieu of a
 1252 physical residential address.

1253 2. If the sexual offender is enrolled, employed, or
 1254 carrying on a vocation at an institution of higher education in
 1255 this state, the sexual offender shall also provide to the
 1256 department the name, address, and county of each institution,
 1257 including each campus attended, and the sexual offender's
 1258 enrollment or employment status.

1259 3. If the sexual offender's place of residence is a motor
 1260 vehicle, trailer, mobile home, or manufactured home, as defined

1261 in chapter 320, the sexual offender shall also provide the
 1262 vehicle identification number; the license tag number; the
 1263 registration number; and a description, including color scheme,
 1264 of the motor vehicle, trailer, mobile home, or manufactured
 1265 home. If the sexual offender's place of residence is a vessel,
 1266 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1267 sexual offender shall also provide the hull identification
 1268 number; the manufacturer's serial number; the name of the
 1269 vessel, live-aboard vessel, or houseboat; the registration
 1270 number; and a description, including color scheme, of the
 1271 vessel, live-aboard vessel, or houseboat.

1272 4. Any sexual offender who fails to report in person as
 1273 required at the sheriff's office, or who fails to respond to any
 1274 address verification correspondence from the department within 3
 1275 weeks after the date of the correspondence, commits a felony of
 1276 the third degree, punishable as provided in ss. 775.082,
 1277 775.083, and 775.084.

1278 Section 13. This act shall take effect July 1, 2010.



**PUBLIC SAFETY
&
DOMESTIC SECURITY POLICY
COMMITTEE**

**TUESDAY, FEBRUARY 2, 2010
8:00 A.M. – 9:45 A.M.
404 HOB**

AMENDMENT PACKET

Larry Cretul
Speaker

Kevin C. Ambler
Chair

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Public Safety & Domestic
2 Security Policy Committee
3 Representative(s) Hooper offered the following:

Amendment (with title amendment)

Remove lines 25-32 and insert:

4
5
6
7 ~~payment of such medical costs shall exist until such time as an~~
8 ~~arrested person is released from~~ is limited to services provided
9 during the time the arrested person was in the custody of the
10 arresting agency. Absent a formal written agreement between a
11 county, municipality, or law enforcement entity and a provider,
12 any payments made from county or municipality general funds to
13 the provider under this section for medical care, treatment,
14 hospitalization, and transportation of an arrested person shall
15 be made at one hundred ten percent (110%) of the Medicare
16 allowable rate for such services. This maximum allowable rate
17 shall not apply to payments to emergency room physicians,
18 licensed under chapter 458 or 459, F.S., providing emergency
19 services within the emergency room.

Amendment No. 1

20

21

22

23

T I T L E A M E N D M E N T

24

Remove line 6 and insert:

25

be made at one hundred ten percent (110%) of the Medicare

26

allowable rate; providing an

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Public Safety & Domestic
2 Security Policy Committee
3 Representative Brandenburg offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 921.186, Florida Statutes, is created
8 to read:

9 921.186 Substantial assistance.-Notwithstanding any other
10 law, the state attorney may move the sentencing court to reduce
11 or suspend the sentence of any person who is convicted of
12 violating any felony offense and who provides substantial
13 assistance in the identification, arrest, or conviction of any
14 of that person's accomplices, accessories, coconspirators, or
15 principals or of any other person engaged in criminal activity
16 that would constitute a felony. The arresting agency shall be
17 given an opportunity to be heard in aggravation or mitigation in
18 reference to any such motion. Upon good cause shown, the motion
19 may be filed and heard in camera. The judge hearing the motion

Amendment No. 1

20 may reduce or suspend the sentence if the judge finds that the
21 defendant rendered such substantial assistance.

22 Section 2. This act shall take effect July 1, 2010.
23
24
25

26 -----
27 **T I T L E A M E N D M E N T**

28 Remove the entire title and insert:

29 An act relating to substantial assistance; creating s.
30 921.186, F.S.; permitting the state attorney to request the
31 sentencing court to reduce or suspend the sentence of a
32 defendant who has been convicted of violating any felony
33 offense and who provides substantial assistance in the
34 identification, arrest, or conviction of any accomplice,
35 accessory, coconspirator, or principal of the defendant or
36 other felon; providing that the arresting agency shall be
37 given an opportunity to be heard in aggravation or
38 mitigation in reference to any such motion; providing that
39 the motion may be filed and heard in camera for good cause
40 shown; providing that a judge may reduce or suspend the
41 sentence if the judge finds that the defendant rendered
42 substantial assistance; providing an effective date.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Public Safety & Domestic
 2 Security Policy Committee
 3 Representative(s) Brandenburg offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (1) of section 817.60, Florida
 8 Statutes, is amended to read:

9 817.60 Theft; obtaining credit card through fraudulent
 10 means.—

11 (1) THEFT BY TAKING OR RETAINING POSSESSION OF CARD
 12 TAKEN.—A person who takes a credit card from the person,
 13 possession, custody, or control of another without the
 14 cardholder's consent; ~~or~~ who possesses, receives, or retains
 15 custody of the card with knowledge that it has been so taken;
 16 or who receives the credit card with intent to use it, to sell
 17 it, or to transfer it to a person other than the issuer or the
 18 cardholder commits ~~is guilty of~~ credit card theft and is subject
 19 to the penalties set forth in s. 817.67(2) ~~s. 817.67~~ (1).

Amendment No. 1

20 Taking a credit card without consent includes obtaining it by
21 conduct defined or known as statutory larceny, common-law
22 larceny by trespassory taking, common-law larceny by trick or
23 embezzlement or obtaining property by false pretense, false
24 promise or extortion. Proof of possession of a credit card that
25 has been recently stolen or possession of a credit card in the
26 name of a person other than that of the possessor, unless
27 satisfactorily explained, gives rise to an inference that the
28 person in possession of the credit card knew or should have
29 known that the credit card had been stolen.

30 Section 2. This act shall take effect July 1, 2010.

31
32
33 -----
34 **T I T L E A M E N D M E N T**

35 Remove the entire title and insert:

36 An act relating to fraudulently taking or using a credit
37 card; amending s. 817.60, F.S.; providing that a person
38 who takes a credit card from the possession, custody, or
39 control of another without the cardholder's consent, who
40 possesses, receives, or retains custody of the credit card
41 with the knowledge that it has been taken, or who receives
42 the credit card with the intent to use it, to sell it, or
43 to transfer it to a person other than the issuer or the
44 cardholder commits a felony of the third degree rather
45 than a misdemeanor of the first degree; providing
46 increased criminal penalties; providing for an inference
47 that the person in possession of a credit card knew or

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 621 (2010)

Amendment No. 1

48 | should have known that the credit card had been stolen in
49 | certain circumstances; providing an effective date.

50