

HB 91

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## CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to residence of sexual offenders and  
7 predators; amending s. 794.065, F.S.; revising provisions  
8 relating to the residence of specified sex offenders;  
9 providing definitions; prohibiting the knowing rental or  
10 lease of a residence within 2,500 feet of specified  
11 locations to a restricted sex offender who intends to  
12 occupy the unit; providing a due diligence defense;  
13 providing criminal penalties; providing applicability to  
14 county and municipal ordinances; amending s. 947.1405,  
15 F.S.; revising conditional release program restrictions on  
16 the residence of certain sexual offenders; amending s.  
17 948.30, F.S.; revising terms and conditions of probation  
18 or community control restricting the residence of persons  
19 convicted of certain sex offenses; providing that  
20 amendments in this act to provisions restricting the  
21 residence of sexual offenders and sexual predators shall  
22 not require the relocation of such an offender who had  
23 established, prior to the effective date of this act, a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 residence not in compliance with the amendments to such  
25 restrictions; providing an effective date.

26  
27 WHEREAS, recent attacks on children by registered sex  
28 offenders within this state have shed light on the necessity of  
29 providing greater protection to children from the risks posed by  
30 registered sex offenders, and

31 WHEREAS, the recidivism rate of sex offenders is high,  
32 especially for offenders who commit crimes involving children,  
33 and

34 WHEREAS, the Legislature is deeply concerned about the  
35 health, safety, and protection of all of Florida's residents,  
36 particularly its children, NOW, THEREFORE,

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Section 794.065, Florida Statutes, is amended  
41 to read:

42 794.065 Unlawful place of residence for restricted sex  
43 offenders; certain leases prohibited ~~persons convicted of~~  
44 ~~certain sex offenses.~~ --

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

46 (a) "Convicted" shall have the same meaning as provided in  
47 s. 943.0435.

48 (b) "Restricted sex offender" means a person convicted of:

49 1. A felony violation of any statute listed in s.  
50 943.0435(1)(a)1.;

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51 2. Any similar offense committed in this state that has  
 52 been redesignated from a former statute number to one of those  
 53 listed in s. 943.0435(1)(a)1.; or

54 3. Any similar offense in another jurisdiction that would  
 55 be a felony if committed in this state,

56  
 57 where the victim of the offense was under the age of 18 at the  
 58 time of the offense and the offender was 18 years of age or  
 59 older at the time of the offense, or the offender was under the  
 60 age of 18 at the time of the offense and was prosecuted as an  
 61 adult.

62 (c) "Within 2,500 feet" means a distance that shall be  
 63 measured in a straight line from the outer boundary of the real  
 64 property upon which the residential dwelling unit of the  
 65 restricted sex offender is located. The distance may not be  
 66 measured by a pedestrian route or automobile route, but instead  
 67 shall be measured as the shortest straight line between the two  
 68 points without regard to any intervening structures or objects.  
 69 Without otherwise limiting the foregoing measurement  
 70 instructions, under those circumstances in which the residential  
 71 dwelling unit of the restricted sex offender is within a  
 72 cooperative, condominium, or apartment building, the parcel of  
 73 real property described in this paragraph shall consist of the  
 74 parcel or parcels of real property upon which the cooperative,  
 75 condominium, or apartment building that contains the residential  
 76 dwelling unit of the restricted sex offender is located.

77 (2)(a) It is unlawful for any person who is a restricted  
 78 sex offender to reside within 2,500 feet of any school, public

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79 | school bus stop located as provided in s. 947.1405(7) (a), day  
 80 | care center, park, playground, or other place where children  
 81 | regularly congregate. A restricted sex offender who violates  
 82 | this section and whose conviction of an offense described in  
 83 | paragraph (1)(b) was classified as a felony of the first degree  
 84 | or higher commits a felony of the third degree, punishable as  
 85 | provided in s. 775.082 or s. 775.083. A restricted sex offender  
 86 | who violates this section and whose conviction of an offense  
 87 | described in paragraph (1)(b) was classified as a felony of the  
 88 | second or third degree commits a misdemeanor of the first  
 89 | degree, punishable as provided in s. 775.082 or s. 775.083.

90 | (b) The provisions of this subsection shall not prohibit a  
 91 | restricted sex offender from continuing to reside at his or her  
 92 | residence solely because a school, public school bus stop  
 93 | located as provided in s. 947.1405(7) (a), day care center, park,  
 94 | playground, or other place where children regularly congregate  
 95 | is built or established within 2,500 feet of that residence  
 96 | after the offender has established residence.

97 | (c) This subsection applies to any person convicted of an  
 98 | offense described in paragraph (1)(b) that occurs on or after  
 99 | October 1, 2006.

100 | (3) (a) ~~(1)~~ It is unlawful for any person who has been  
 101 | convicted of a violation of s. 794.011, s. 800.04, s. 827.071,  
 102 | or s. 847.0145, regardless of whether adjudication has been  
 103 | withheld, in which the victim of the offense was less than 16  
 104 | years of age, to reside within 1,000 feet of any school, day  
 105 | care center, park, or playground. A person who violates this  
 106 | section and whose conviction under s. 794.011, s. 800.04, s.

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107 827.071, or s. 847.0145 was classified as a felony of the first  
108 degree or higher commits a felony of the third degree,  
109 punishable as provided in s. 775.082 or s. 775.083. A person who  
110 violates this section and whose conviction under s. 794.011, s.  
111 800.04, s. 827.071, or s. 847.0145 was classified as a felony of  
112 the second or third degree commits a misdemeanor of the first  
113 degree, punishable as provided in s. 775.082 or s. 775.083.

114 (b)(2) This subsection ~~section~~ applies to any person  
115 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,  
116 or s. 847.0145 for offenses that occur on or after October 1,  
117 2004.

118 (4) A landlord or owner of a residential dwelling unit  
119 shall not knowingly rent or lease a residential dwelling unit  
120 located within 2,500 feet of a school, public school bus stop  
121 located as provided in s. 947.1405(7)(a), day care center, park,  
122 playground, or other place where children regularly congregate  
123 if a prospective tenant, as defined in s. 83.43, is a restricted  
124 sex offender who intends to occupy the unit. A person who  
125 violates this subsection commits a misdemeanor of the second  
126 degree, punishable as provided in s. 775.082 or s. 775.083. It  
127 shall be an affirmative defense to this offense that prior to  
128 rental or lease the landlord or owner used due diligence and was  
129 unable to determine that a prospective tenant of the unit was a  
130 restricted sex offender intending to occupy the unit.

131 (5) Nothing contained in this section shall prevent any  
132 county or municipality from enacting an ordinance relating to  
133 restrictions on the location of the residence of restricted sex  
134 offenders provided that such restrictions are identical to the

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135 | provisions of this section. Such an ordinance may differ as to  
 136 | the offenses that might subject an offender to residence  
 137 | restrictions.

138 | Section 2. Paragraph (a) of subsection (7) of section  
 139 | 947.1405, Florida Statutes, is amended to read:

140 | 947.1405 Conditional release program.--

141 | (7) (a) Any inmate who is convicted of a crime committed on  
 142 | or after October 1, 1995, or who has been previously convicted  
 143 | of a crime committed on or after October 1, 1995, in violation  
 144 | of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is  
 145 | subject to conditional release supervision, shall have, in  
 146 | addition to any other conditions imposed, the following special  
 147 | conditions imposed by the commission:

148 | 1. A mandatory curfew from 10 p.m. to 6 a.m. The  
 149 | commission may designate another 8-hour period if the offender's  
 150 | employment precludes the above specified time, and such  
 151 | alternative is recommended by the Department of Corrections. If  
 152 | the commission determines that imposing a curfew would endanger  
 153 | the victim, the commission may consider alternative sanctions.

154 | 2. If the victim was under the age of 18, a prohibition on  
 155 | living within 2,500 ~~1,000~~ feet of a school, day care center,  
 156 | park, playground, designated public school bus stop, or other  
 157 | place where children regularly congregate. A releasee who is  
 158 | subject to this subparagraph may not relocate to a residence  
 159 | that is within 2,500 ~~1,000~~ feet of a public school bus stop.  
 160 | Beginning October 1, 2006 ~~2004~~, the commission or the department  
 161 | may not approve a residence that is located within 2,500 ~~1,000~~  
 162 | feet of a school, day care center, park, playground, designated

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163 school bus stop, or other place where children regularly  
164 congregate for any releasee who is subject to this subparagraph.  
165 On October 1, 2006 ~~2004~~, the department shall notify each  
166 affected school district of the location of the residence of a  
167 releasee 30 days prior to release and thereafter, if the  
168 releasee relocates to a new residence, shall notify any affected  
169 school district of the residence of the releasee within 30 days  
170 after relocation. If, on October 1, 2006 ~~2004~~, any public school  
171 bus stop is located within 2,500 ~~1,000~~ feet of the existing  
172 residence of such releasee, the district school board shall  
173 relocate that school bus stop. Beginning October 1, 2006 ~~2004~~, a  
174 district school board may not establish or relocate a public  
175 school bus stop within 2,500 ~~1,000~~ feet of the residence of a  
176 releasee who is subject to this subparagraph. The failure of the  
177 district school board to comply with this subparagraph shall not  
178 result in a violation of conditional release supervision. The  
179 provisions of this subparagraph shall not apply to a bus stop  
180 specifically designated for an exceptional student. For purposes  
181 of this subparagraph, a 2,500-foot distance shall be measured as  
182 in s. 794.065.

183 3. Active participation in and successful completion of a  
184 sex offender treatment program with qualified practitioners  
185 specifically trained to treat sex offenders, at the releasee's  
186 own expense. If a qualified practitioner is not available within  
187 a 50-mile radius of the releasee's residence, the offender shall  
188 participate in other appropriate therapy.

189 4. A prohibition on any contact with the victim, directly  
190 or indirectly, including through a third person, unless approved

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191 by the victim, the offender's therapist, and the sentencing  
192 court.

193 5. If the victim was under the age of 18, a prohibition  
194 against contact with children under the age of 18 without review  
195 and approval by the commission. The commission may approve  
196 supervised contact with a child under the age of 18 if the  
197 approval is based upon a recommendation for contact issued by a  
198 qualified practitioner who is basing the recommendation on a  
199 risk assessment. Further, the sex offender must be currently  
200 enrolled in or have successfully completed a sex offender  
201 therapy program. The commission may not grant supervised contact  
202 with a child if the contact is not recommended by a qualified  
203 practitioner and may deny supervised contact with a child at any  
204 time. When considering whether to approve supervised contact  
205 with a child, the commission must review and consider the  
206 following:

207 a. A risk assessment completed by a qualified  
208 practitioner. The qualified practitioner must prepare a written  
209 report that must include the findings of the assessment and  
210 address each of the following components:

211 (I) The sex offender's current legal status;

212 (II) The sex offender's history of adult charges with  
213 apparent sexual motivation;

214 (III) The sex offender's history of adult charges without  
215 apparent sexual motivation;

216 (IV) The sex offender's history of juvenile charges,  
217 whenever available;



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218 (V) The sex offender's offender treatment history,  
 219 including a consultation from the sex offender's treating, or  
 220 most recent treating, therapist;

221 (VI) The sex offender's current mental status;

222 (VII) The sex offender's mental health and substance abuse  
 223 history as provided by the Department of Corrections;

224 (VIII) The sex offender's personal, social, educational,  
 225 and work history;

226 (IX) The results of current psychological testing of the  
 227 sex offender if determined necessary by the qualified  
 228 practitioner;

229 (X) A description of the proposed contact, including the  
 230 location, frequency, duration, and supervisory arrangement;

231 (XI) The child's preference and relative comfort level  
 232 with the proposed contact, when age-appropriate;

233 (XII) The parent's or legal guardian's preference  
 234 regarding the proposed contact; and

235 (XIII) The qualified practitioner's opinion, along with  
 236 the basis for that opinion, as to whether the proposed contact  
 237 would likely pose significant risk of emotional or physical harm  
 238 to the child.

239

240 The written report of the assessment must be given to the  
 241 commission.

242 b. A recommendation made as a part of the risk-assessment  
 243 report as to whether supervised contact with the child should be  
 244 approved;

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245 c. A written consent signed by the child's parent or legal  
246 guardian, if the parent or legal guardian is not the sex  
247 offender, agreeing to the sex offender having supervised contact  
248 with the child after receiving full disclosure of the sex  
249 offender's present legal status, past criminal history, and the  
250 results of the risk assessment. The commission may not approve  
251 contact with the child if the parent or legal guardian refuses  
252 to give written consent for supervised contact;

253 d. A safety plan prepared by the qualified practitioner,  
254 who provides treatment to the offender, in collaboration with  
255 the sex offender, the child's parent or legal guardian, and the  
256 child, when age appropriate, which details the acceptable  
257 conditions of contact between the sex offender and the child.  
258 The safety plan must be reviewed and approved by the Department  
259 of Corrections before being submitted to the commission; and

260 e. Evidence that the child's parent or legal guardian, if  
261 the parent or legal guardian is not the sex offender,  
262 understands the need for and agrees to the safety plan and has  
263 agreed to provide, or to designate another adult to provide,  
264 constant supervision any time the child is in contact with the  
265 offender.

266  
267 The commission may not appoint a person to conduct a risk  
268 assessment and may not accept a risk assessment from a person  
269 who has not demonstrated to the commission that he or she has  
270 met the requirements of a qualified practitioner as defined in  
271 this section.

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272           6. If the victim was under age 18, a prohibition on  
273 working for pay or as a volunteer at any school, day care  
274 center, park, playground, or other place where children  
275 regularly congregate, as prescribed by the commission.

276           7. Unless otherwise indicated in the treatment plan  
277 provided by the sexual offender treatment program, a prohibition  
278 on viewing, owning, or possessing any obscene, pornographic, or  
279 sexually stimulating visual or auditory material, including  
280 telephone, electronic media, computer programs, or computer  
281 services that are relevant to the offender's deviant behavior  
282 pattern.

283           8. Effective for a releasee whose crime is committed on or  
284 after July 1, 2005, a prohibition on accessing the Internet or  
285 other computer services until the offender's sex offender  
286 treatment program, after a risk assessment is completed,  
287 approves and implements a safety plan for the offender's  
288 accessing or using the Internet or other computer services.

289           9. A requirement that the releasee must submit two  
290 specimens of blood to the Florida Department of Law Enforcement  
291 to be registered with the DNA database.

292           10. A requirement that the releasee make restitution to  
293 the victim, as determined by the sentencing court or the  
294 commission, for all necessary medical and related professional  
295 services relating to physical, psychiatric, and psychological  
296 care.

297           11. Submission to a warrantless search by the community  
298 control or probation officer of the probationer's or community  
299 controllee's person, residence, or vehicle.

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300 Section 3. Subsection (4) is added to section 948.30,  
301 Florida Statutes, to read:

302 948.30 Additional terms and conditions of probation or  
303 community control for certain sex offenses.--Conditions imposed  
304 pursuant to this section do not require oral pronouncement at  
305 the time of sentencing and shall be considered standard  
306 conditions of probation or community control for offenders  
307 specified in this section.

308 (4) Effective for probationers or community controllees  
309 whose crime was committed on or after October 1, 2006, and who  
310 are placed under supervision for violation of chapter 794, s.  
311 800.04, s. 827.071, or s. 847.0145, in addition to all other  
312 standard and special conditions imposed, the court must impose a  
313 prohibition on living within 2,500 feet of a school, public  
314 school bus stop located as provided in s. 947.1405(7)(a), day  
315 care center, park, playground, or other place where children  
316 regularly congregate as prescribed by the court. For purposes of  
317 this subsection, a 2,500-foot distance shall be measured as in  
318 s. 794.065.

319 Section 4. The amendments in this act to provisions  
320 restricting the residence of sexual offenders and sexual  
321 predators shall not require the relocation of such an offender  
322 who had established, prior to the effective date of this act, a  
323 residence not in compliance with the amendments to such  
324 restrictions contained in this act.

325 Section 5. This act shall take effect October 1, 2006.